ATTACHMENT 3

COPY OF THE NEW JERSEY REGISTER NOTICE OF THE PROPOSAL

5. If any of the management areas identified in the joint New England Fishery Management Council, Atlantic States Marine Fisheries Commission Fishery Management plan for Atlantic Herring are closed by the National Marine Fisheries Service or the Atlantic States Marine Fisheries Commission, the landing of Atlantic herring harvested from any management area that is closed shall be prohibited in New Jersey.]

7:25-18.17 Request for adjudicatory hearing

Any person, subject to the limitation on third party appeal rights set forth in P.L. 1993, c.359 (N.J.S.A. 52:14B-3.1 through 3.3), who believes himself or herself to be aggrieved with respect to a license and/or permit decision made by the Department under this subchapter may request an adjudicatory hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., in accordance with the provisions set forth in N.J.A.C. 7:25-14.21, Request for adjudicatory hearing.

(a)

ENVIRONMENTAL REGULATION
AIR QUALITY MANAGEMENT

Notice of Extension of Comment Period and Opportunity for Public Input on Mechanisms for Retailers to Demonstrate Compliance
Prevention of Air Pollution From Architectural Coatings and Consumer Products
Proposed Amendments: N.J.A.C. 7:27-23.1, 23.2, 23.3 and 23.5; and 7:27A-3.10
Proposed New Rules: N.J.A.C. 7:27-23.4 and 23.8

Take notice that the New Jersey Department of Environmental Protection (Department) is extending the public comment period on its proposed new rules and amendments of its rules at N.J.A.C. 7:27-23 and 7:27A-3.10, relating to the prevention of air pollution from architectural coatings. This proposal was published in the July 21, 2003 New Jersey Register at 35 N.J.R. 2983(a). The purpose of the extension is to seek comment on feasible mechanisms that retailers could use to demonstrate compliance with the rules. Options being considered by the Department for retailers to demonstrate compliance include any one of the following:

1. Written communication between the retailer and the manufacturers and distributors that the retailer will accept only products for sale in New Jersey that comply with N.J.A.C. 7:27-23;

2. Written agreements between the retailer and the manufacturers and distributors in which the manufacturers and distributors commit to supply to the retailer only products that comply with N.J.A.C. 7:27-23; or

3. The retailer's use of invoices, purchase orders and other contractual and billing documents, which specify that the retailer will only accept products that comply with N.J.A.C. 7:27-23.

The comment period for this proposal was originally scheduled to close on September 19, 2003. The Department is extending the comment period by 26 days to October 15, 2003. Written comments may be submitted by close of business, October 15, 2003, to:

Alice Previte, Esq.
NJ Department of Environmental Protection
Office of Legal Affairs
PO Box 402
Trenton, New Jersey 08625-0402
Attn: DEP Docket # 13-03-06/248

Please refer to the original proposal for detailed information regarding the proposed amendments and new rules. Copies of the Department's proposal are available from the Department's website at www.state.nj.us/dep/aqm, the Department's Public Information Center at 401 E. State Street in Trenton, the Department's Regional Enforcement Offices, a number of public libraries throughout the State, and, for a fee, from Westlaw Publishing at 1-800-800-WEST. For more information on obtaining copies, please contact:

Ms. Diane Hutchings
NJDEP Air Quality Planning
401 E. State Street, 7th Floor
PO Box 418
Trenton, NJ 08625-0418
Phone: (609) 633-0530
Fax: (609) 633-6198
diane.hutchings@dep.state.nj.us

(b)

OFFICE OF AIR QUALITY MANAGEMENT
AIR QUALITY REGULATION PROGRAM

Air Pollution Control
Prevention of Air Pollution from Consumer Products
Proposed Amendments: N.J.A.C. 7:27-24.1 through 24.7; and 7:27A-3.10
Proposed New Rules: N.J.A.C. 7:27-24.3, 24.8 through 24.12
Proposed Repeal: N.J.A.C. 7:27-24.6

Authorized By: Bradley M. Campbell, Commissioner, Department of Environmental Protection.
Authority: N.J.S.A. 13:1B-3(e), 13:1D-9 and 26:2C-1 et seq., in particular 26:2C-8
Calendar Reference: See Summary below for explanation of exception to calendar requirement.
DEP Docket Number: 18-03-08/247.
Proposal Number: PRN 2003-385.

A public hearing concerning this proposal will be held on:

Thursday, November 13, 2003 at 1:30 P.M. at:
New Jersey Department of Environmental Protection
Hearing Room, 1st First Floor
401 East State Street
Trenton, New Jersey 08625

Directions to the hearing room may be found at the Department's website address http://www.state.nj.us/dep/where.htm.

Submit written comments by November 14, 2003 to:

Alice Previte, Esq.
Attention: DEP Docket No. 18-03-08/247
New Jersey Department of Environmental Protection
Office of Legal Affairs
PO Box 402
Trenton, N.J. 08625-0402

Written comments may also be submitted at the public hearing. It is requested (but not required) that anyone submitting written comments also include a diskette containing an electronic version, preferably in Word, of the written comments with the submission. Also, it is requested (but not required) that anyone submitting oral testimony at the public hearing provide a copy of any prepared text to the stenographer at the hearing.

The proposed amendments will become operative 60 days after adoption (see N.J.S.A. 26:2C-8).

Interested persons may obtain a copy of the proposal through the following methods:

1. The proposal may be downloaded electronically from the Department's Office of Air Quality Management's website at http://www.state.nj.us/dep/aqm.

2. The proposal may be requested from the Department by e-mailing Diane.Hutchings@dep.state.nj.us, or by telephoning (609) 292-6722.

3. The proposal may be inspected during normal office hours at the Department's Public Information Center at 401 E. State in Trenton, or at one of the Department's Regional Enforcement Offices at the following locations:

Central Regional Office: Horizon Center Route 130, Bldg. 300 Robbinsville, NJ 08625-0407	Metropolitan Region: 2 Babcock Place West Orange, NJ 07052-5504
Northern Region: 1259 Route 46 East, Bldg. 2 Parsippany, NJ 07054-4191	Southern Region: One Port Center 2 Riverside Drive, Suite 201 Camden, NJ 08103

4. The proposal may be inspected at one of the following public libraries:

Trenton Public Library 120 Academy Street Trenton, NJ 08608	Atlantic City Public Library 1 North Tennessee Avenue Atlantic City, NJ 08401
Newark Public Library 5 Washington Street Newark, NJ 07102-0630	Alexander Library Rutgers University 169 College Avenue New Brunswick, NJ 08901
Camden Free Public Library 418 Federal Street Camden, NJ 08103	New Brunswick Free Public Library 60 Livingston Avenue New Brunswick, NJ 08901
Joint Free Public Library Morrison and Morris County 1 Miller Road Morrison, NJ 07960	Burlington City Library 23 West Union Street Burlington, NJ 08016
Perth Amboy Public Library 193 Jefferson Street Perth Amboy, NJ 08861	Freehold Public Library 28½ East Main Street Freehold, NJ 07728
Toms River Public Library 101 Washington Street Toms River, NJ 08753	Somerville Public Library 35 W. End Avenue Somerville, NJ 08876
Penns Grove/Carney's Point Public Library Association 222 South Broad Street Penns Grove, NJ 08069	Burlington County Library Pioneer Blvd. and Woodlane Road Mt. Holly, NJ 08060

The agency proposal follows:

Summary

The Department of Environmental Protection (the Department) is proposing new rules and amendments at N.J.A.C. 7:27-24. N.J.A.C. 7:27-24 contains standards which control the emissions of volatile organic compounds (VOCs) and toxics from consumer products and establishes requirements that apply to persons who are manufacturers, distributors, suppliers and retailers of consumer products. The Department is also proposing related amendments at N.J.A.C. 7:27A-3.10, Air administrative procedures and penalties.

These proposed new rules and amendments apply to certain chemically formulated consumer products (CFCPs) that have VOCs in their formulation such as hair spray, insecticides, and cleaners; and portable fuel containers (PFCs), from which VOCs may be emitted when gasoline or other fuels are poured into or out of the container or stored in the container.

Since the Department has provided a 60-day comment period on this proposal, the proposal is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

Purpose of Rulemaking

The intent of this rulemaking is to reduce VOC emissions, which are ozone precursors, to assist in the attainment of the one-hour ozone National Ambient Air Quality Standard (NAAQS) and the eight-hour ozone health standard; to address the VOC emission reduction shortfall identified by the United States Environmental Protection Agency (USEPA); and to implement the Department's State Implementation Plan for Ozone (Ozone SIP) commitment to the USEPA. The proposed amendments will also help reduce fine particulates and potentially reduce toxics, that are also VOCs or formed from VOCs.

Ozone is a highly reactive gas formed in the lower atmosphere or troposphere from chemical reactions involving VOCs in the presence of sunlight. At elevated concentrations, it causes a variety of adverse human health effects as well as damage to crops and materials.

The health based NAAQS for ozone was established by the Federal Clean Air Act, 42 U.S.C. §§7401 through 7671q. Since New Jersey encompasses areas that do not meet the health based NAAQS for ozone, New Jersey was required by the Clean Air Act to prepare and submit to the USEPA for approval an Ozone SIP, which sets forth the measures New Jersey will undertake to bring its air quality into attainment with the one-hour averaged ozone standard.

On August 31, 1998, New Jersey submitted to the USEPA a revision to its Ozone SIP in which the State demonstrated the measures it would adopt or utilize to attain the health based ozone NAAQS. This revision was entitled "Attainment and Maintenance of the Ozone National Ambient Air Quality Standards-Meeting the Requirements of the Alternative Ozone Attainment Demonstration Policy." As part of its review of New Jersey's submittal, the USEPA examined the uncertainties in the projections contained therein and determined that New Jersey (and other states) would need to commit to implementing even further VOC and oxides of nitrogen (NO_x) emission reductions to be able to more conclusively predict that attainment of the one-hour ozone NAAQS would be achieved. On December 16, 1999, the USEPA published a notice in the Federal Register (64 Fed. Reg. 70380) in which it proposed approval of New Jersey's Ozone SIP submittal, contingent upon New Jersey's committing to adopt and submit additional measures to secure additional reductions. The USEPA similarly found that a number of other states as well, including Connecticut, New York, Pennsylvania, Delaware and Maryland, had emission reduction shortfalls in their Ozone SIP submittals.

In a December 16, 1999, Federal Register Notice, the USEPA indicated that it believed it was appropriate for states in the Ozone Transport Region (OTR) to develop regional strategies to meet the need for additional emission reductions. The OTR was created by the 1990 amendments to the Federal Clean Air Act and includes states, including New Jersey, in the northeast and mid-Atlantic areas. The Ozone Transport Commission (OTC), an organization whose membership included the governors or their representatives and air program directors of the 13 jurisdictions within the OTR, was established with the mission, in part, to undertake the development of recommended control measures which can be applied within the OTR to make progress toward attaining the NAAQS for ozone. Since six OTC member states had been found by the USEPA to have shortfalls in their Ozone SIP commitments, the OTC members agreed to work together regionally to develop strategies which states could use to obtain additional emission reductions. This agreement was formally set forth in a "Memorandum of Understanding Among the Ozone Transport Commission Regarding the Development of Specific Control Measures to Support Attainment and Maintenance of the Ozone National Ambient Air Quality Standards (MOU)," which was approved by the OTC on June 1, 2000. Subsequently the OTC developed model rules for six control measures (five VOC measures and one NO_x measure). These model rules may be found on the Ozone Transport Commission's website at:. http://www.sso.org/otc/Publications/pub2.htm.

On April 26, 2000, New Jersey submitted a revision to its Ozone SIP to the USEPA, in which it committed to proposing new rules and/or amendments to address the VOC and NO_x emission reduction shortfall. On October 8, 2001, New Jersey submitted a revision to its Ozone SIP, reaffirming its commitment and providing a list of the six OTC model rules and the anticipated emission reductions from the rules. This SIP revision was approved by the USEPA on February 4, 2002. The new rules and amendments proposed herein encompass two of the six OTC model rules (Model Rule for Consumer Products and Model Rule for Portable Fuel Container Spillage Control). The Department intends to address the other four measures separately in other rule proposals. Rule amendments based on two of the model rules (Model Rule for Mobile Equipment Repair and Refinishing and Model Rule for Solvent Cleaning Operations) were recently adopted. See 35 N.J.R. 2509(a), June 2, 2003. Rule amendments based on one model rule (Model Rule for Architectural and Industrial Maintenance Coatings) were recently proposed. See 35 N.J.R. 2983(a), July 21, 2003. Rule amendments based on the final model rule (Model Rule for Additional Nitrogen Oxides Control Measures) are planned to be proposed this year.

The OTC workgroup that developed the consumer product and portable fuel container model rules, in which New Jersey was an active participant, had several meetings that included stakeholders and workgroup members. Interested and affected parties were also able to review drafts of the OTC model rule documents via the Internet and submit written or oral comments to the OTC and designated OTC workgroup staff.

The OTC states relied on the experience, research and technical expertise of the California Air Resources Board (CARB) in drafting their model rules for CFCPs and PFCs. The OTC CFCP and PFC model rules are based on CARB rules. Several OTC states, including New Jersey, New York, Massachusetts, and Rhode Island, have existing CFCP rules that were adopted before the USEPA Federal Consumer Products rule was adopted in 1998. All

states are subject to the USEPA Federal Consumer Products rule. Delaware, New York and Pennsylvania have adopted consumer products rules based on the OTC model rules for CFCPs and PFCs. Maryland has adopted a PFC rule, and is developing a CFCP rule based on the OTC models.

Chemically Formulated Consumer Products

The Department's existing and proposed rules for CFCPs, as well as the Federal rules for consumer products (40 CFR §§59.401 to 59.413), regulate products such as hair sprays, insecticides, general purpose and glass cleaners, air fresheners, adhesives, automotive polishes, antiperspirants and deodorants. The CFCP rules control emissions by establishing limits on the VOC content of the products. The proposed amendments contain as stringent or more stringent VOC content limits than New Jersey's existing rules and the Federal rules.

The proposed rules and amendments for CFCPs would primarily impact manufacturers (including any person who hires another person to manufacture a product for them for compensation). In order to comply with the rules, manufacturers may have to reformulate some of their products in order to meet the new rule requirements or refrain from selling them in New Jersey for use in New Jersey. Distributors, suppliers and retailers will need to ensure proper distribution and sale of the products.

Two related rules currently apply regarding CFCPs in New Jersey, the Department's rules at N.J.A.C. 7:27-24 and the Federal rules at 40 CFR §§59.201 to 59.214. The rules proposed herein are as stringent or more stringent than either of these. The existing Department rules became effective in November 1995 (the VOC limits became effective in April 1996) and regulate 23 product categories. The Federal rules became effective in September 1998 and regulate 25 product categories. The Federal rules regulate automotive windshield washer fluids and charcoal lighter materials, while the existing New Jersey rules do not. Over half of the emissions in the consumer products VOC emission inventory (as defined by the USEPA) were not regulated by the existing New Jersey rules or Federal rules.

As discussed above, these proposed amendments are based on the OTC model rule for CFCPs, which in turn is based on the CARB rules and background data. The technical basis for the proposed VOC content limits lies within the framework that the CARB developed for its consumer products rules. Significant technical documentation was developed as part of the CARB process. The CARB VOC limits and data were reviewed for applicability in New Jersey and the rest of the OTR. As a result, the proposed CFCP rules and amendments include most, but not all, of the product categories regulated in California. Some of the proposed VOC limits have an effective date later than in California. To maximize consistency and uniformity of the products, most VOC limits, definitions, exemptions and flexibility options in the proposed rules and amendments are the same as those used in California.

The proposed rules and amendments regulate 45 consumer product categories. Twenty-one of these categories are not included in the Federal rules. Fourteen categories have more stringent limits than the Federal rules. Products manufactured after January 1, 2005 must comply with the proposed VOC limits. Products manufactured prior to January 1, 2005 which do not meet the new VOC limits, can continue to be sold in New Jersey if they comply with the rules in effect at the time they were manufactured and if they display the date or date-code on which they were manufactured. Some of the more stringent limits are currently in effect in California, while others have future effective dates.

The proposed rules and amendments also prohibit the use of methylene chloride, perchloroethylene or trichloroethylene in aerosol adhesives manufactured or sold after January 1, 2005. This provision is in both the California consumer products regulation and the OTC model rule. These compounds are hazardous air pollutants (substances listed in Clean Air Act Title III, Sec. 112(b)), toxic substances (substances listed at N.J.A.C. 7:27-17.3 Table 1), toxic air contaminants (TACs, as shown in the CARB Health and Safety Code) and probable human carcinogens. CARB defines a TAC as "... an air pollutant which may cause or contribute to an increase in mortality or serious illness, or which may pose a hazard to human health." CARB's analysis (in the April 7, 2000 CARB Staff Report: Initial Statement of Reasons for the Proposed Amendments to the California Consumer Products Regulation Relating to Aerosol Adhesives) concluded that these compounds are used in small amounts in aerosol adhesives, that there are alternative formulations available, and that eliminating these compounds in aerosol adhesives would reduce the overall exposure to and risk from these compounds.

Portable Fuel Containers

The OTC model rule for PFCs is also based on CARB rules and background data. The proposed rules for PFCs would primarily impact manufacturers. Manufacturers may have to redesign some of their products in order to meet the new rules' requirements or refrain from selling them in New Jersey for use in New Jersey. Distributors, suppliers and retailers will need to ensure proper distribution and sale of the products.

Currently there are no regulations regarding PFCs in New Jersey. Fuel stored in PFCs are a significant source of air pollution emissions in the United States. Pollutants are emitted from PFCs in five ways: (1) permeation emissions, that is, fuel molecules that escape through the wall of the PFC; (2) diurnal emissions, that is, stored fuel molecules that escape to the air through any opening of the PFC; (3) transport-spillage emissions, that is, fuel vapors produced from any accidental discharge of a fuel while the fuel is being transported to another destination; (4) spillage emissions, that is, fuel vapors produced when fuel is being distributed from a container to another source; and (5) refueling-vapor displacement emissions, that is, fuel vapors that escape when any fuel tank or fuel container is being refueled from a PFC.

The proposed rules require that PFCs and/or spouts must be equipped with an automatic shut-off device that stops fuel flow before the fuel tank overflows, and an automatic device that closes and seals the PFC when it is removed from the fuel tank. There are also other required design specifications, all of which are intended to significantly lessen the possibility of fuel spillage and reduce emissions (for example, requiring a permeation rate). Manufacturers of PFCs and spouts must comply with the proposed rules by January 1, 2005. PFCs and spouts manufactured prior to this date, which do not comply with the rules, may be sold until January 1, 2006 if they display the date or date-code on which they were manufactured.

Section by Section Summary of Amendments and New Rules

The Department proposes to change the heading of N.J.A.C. 7:27-24 from "Control and Prohibition of Volatile Organic Compounds from Consumer and Commercial Products" to "Prevention of Air Pollution from Consumer Products." The Department proposes to replace "control and prohibition" with "prevention" to be consistent with the heading of N.J.A.C. 7:27-23. The Department proposes to replace "volatile organic compounds" with "air pollution" because these proposed rules herein include requirements for toxics that are not VOCs. The Department proposes to remove "commercial" to be consistent with the way CARB and USEPA titles their rules.

N.J.A.C. 7:27-24.1 Definitions

The Department is proposing to add definitions of 90 new terms based on the OTC model rule for consumer products. These new terms are used in the proposed rules to regulate additional categories and subcategories of consumer products. The definition of the new term "chemically formulated consumer product category" replaces the current term "product category" to clarify that these categories refer to chemically formulated consumer products and not to portable fuel containers and spouts. The term "product category" is being deleted. The definition of the new term "low vapor pressure VOC" or "LVP-VOC" is partly taken from the existing rule at N.J.A.C. 7:27-24.2(f). The new term "supplier" includes suppliers located in or outside of New Jersey.

The other 87 new terms are the following: "ACP agreement," "adhesive," "adhesive remover," "aerosol adhesive," "alternative control plan (ACP)," "antimicrobial hand or body cleaner or soap," "architectural coating," "astringent/toner," "automotive brake cleaner," "automotive engine compartment adhesive," "automotive hard paste wax," "automotive headliner adhesive," "automotive instant detailer," "automotive rubbing or polishing compound," "automotive wax, polish, sealant or glaze," "automotive windshield washer fluid," "bug and tar remover," "carpet and upholstery cleaner," "charcoal lighter material," "colorant," "date-code," "disinfectant," "distributor," "dry cleaning fluid," "electronic cleaner," "establishment," "facial cleaner or soap," "fat wood," "FDA," "flexible vinyl," "flexible vinyl adhesive," "floor seam sealer," "floor wax stripper," "fuel," "general purpose degreaser," "general-use hand or body cleaner or soap," "hair shine," "heavy-duty hand cleaner or soap," "herbicide," "hospital or medical disinfectant," "house dust mite," "house dust mite product," "insecticide fogger," "institutional product," "institutional use," "laminate repair/edgebanding adhesive," "lubricant," "medicated astringent/medicated toner," "medium volatility organic compound," "metal polish/cleanser," "mist spray adhesive," "mounting adhesive," "multi-purpose dry lubricant," "multi-purpose lubricant," "multi-purpose solvent," "non-aerosol product," "non-carbon containing compound," "non-selective terrestrial herbicide," "paint," "paint remover or stripper," "penetrant," "polyolefin adhesive," "polystyrene foam

adhesive," "plasticizer," "product brand name," "product line," "roll-on product," "rubber and vinyl protectant," "rubbing alcohol," "sealant and caulking compound," "semisolid," "silicone based multi-purpose lubricant," "South Coast Air Quality Management District Rule," "special purpose spray adhesive," "spot remover," "stick product," "terrestrial," "tire sealant and inflation," "type A propellant," "type B propellant," "type C propellant," "undercoating," "usage directions," "variance," "VOC-containing product," "waterproofer" and "web spray adhesive."

The Department is proposing to amend 49 existing definitions to clarify them and to make them consistent with the OTC consumer products model rule definitions. The definition of "consumer product" is proposed to be amended to include portable fuel containers, architectural coatings, and any associated packaging. Even though architectural coatings are included under the definition of consumer products, architectural coatings are regulated by N.J.A.C. 7:27-23 not by N.J.A.C. 7:27-24. Also, the proposed definition of the term "consumer product" clarifies that those consumer products regulated by Subchapter 24 include those consumer products which are used by persons who provide a service. This service may be for compensation or not (for example, cleaning services, maids, community volunteer workers). The definition of "household product" is proposed to be reorganized and to exclude a product used primarily in the maintenance or operation of an establishment. The definition of "innovative product exemption" is proposed to be reorganized, expanded to include portable fuel containers, spouts, and portable fuel containers and spouts, and expanded to include air pollution control agencies of other states as issuing agencies. The definition of "manufacturer" is proposed to be amended to include any person for whom a product is manufactured, or who distributes the product, if identified on the product label, and any person that hires another person to manufacture a product. A manufacturer may be located in or outside of New Jersey. The definition of "packaging" is proposed to also define "package" and its definition is proposed to be amended so it would apply to portable fuel containers and spouts as well as to chemically formulated consumer products. "Package" or "packaging" includes a product's container.

The other 44 terms proposed to be amended are the following: "aerosol product," "agricultural use," "air freshener," "all other forms," "antiperspirant," "bathroom and tile cleaner," "carburetor or fuel-injection air intake cleaner," "construction, panel, and floor covering adhesive," "consumer," "contact adhesive," "cooking spray," "crawling bug insecticide," "deodorant," "device," "dusting aid," "engine degreaser," "fabric protectant," "floor polish or wax," "flying bug insecticide," "fragrance," "furniture maintenance product," "gel," "general purpose adhesive," "general purpose cleaner," "glass cleaner," "hair mousse," "hair spray," "hair styling gel," " 'high volatility organic compound' or 'HVOC,' " "insecticide," "laundry prewash," "laundry starch product," "liquid," "nail polish remover," "nonresilient flooring," "oven cleaner," "pesticide," "principal display panel or panels," "restricted materials," "shaving cream," "spray buff product," "structural waterproof adhesive," "volatile organic compound" and "wasp and hornet insecticide." The Department changed 19 of these terms to make them consistent with the OTC Model Rule definitions and in some cases by also removing the term "consumer." The Department changed 25 other terms by removing the term "consumer," by making minor grammatical or organizational changes, or by correcting a typographical error.

The Department is proposing to delete the term "container" because its definition in the existing rules is identical to the definition of "packaging." Also, the Department is proposing to delete the term "household adhesive" to be consistent with the terms and chemically formulated consumer product categories in the OTC Model Rule.

The Department is proposing to add definitions of 14 new terms based on the OTC draft model rule "Portable Fuel Container Spillage Control." These terms are used in the proposed rules to regulate emissions from portable fuel containers. The 14 terms are the following: "distributor," "nominal capacity," "outboard engine," "permeation," "portable fuel container," "portable fuel container product category," "representative code," "retail outlet," "retailer," "safety can," "spill-proof spout," "spill-proof system," "spout" and "target fuel tank." The term "distributor" includes distributors located in or outside of New Jersey.

N.J.A.C. 7:27-24.2 Applicability

Existing N.J.A.C. 7:27-24.2(a) is proposed to be amended to modify Subchapter 24 applicability to include any person who sells, offers for sale, holds for sale, distributes, supplies, or manufactures for sale in New Jersey regulated consumer products. N.J.A.C. 7:27-24.2(a) is also amended to specify that the consumer product must be for use in New Jersey. The product's use could be by a consumer or by a person in the performance of a service. The service could be for a fee or may be voluntary and is intended to include, but not be limited to, persons employed in cleaning businesses or who perform volunteer work. The manufacturer, distributor, and retailer would be regulated, but not the citizens using the product.

Existing N.J.A.C. 7:27-24.2(b)1 is proposed to be amended and relocated as N.J.A.C. 7:27-24.2(f), and existing N.J.A.C. 7:27-24.2(b)2 through 5 are proposed to be amended and relocated as N.J.A.C. 7:27-24.2(d)2 through 5.

Proposed new N.J.A.C. 7:27-24.2(b) lists the two types of consumer products that will be regulated under amended Subchapter 24. The first type is chemically formulated consumer products included in any of the categories listed in proposed Table 24A at N.J.A.C. 7:27-24.4(a). The second type is a portable fuel container and spout, whether sold separately or together.

Existing N.J.A.C. 7:27-24.2(c), which addresses selling non-compliant chemically formulated consumer products manufactured before the rule operative date, is proposed for deletion because the Department proposes to replace it with proposed N.J.A.C. 7:27-24.4(d).

Proposed new N.J.A.C. 7:27-24.2(c) identifies a group of chemically formulated consumer products for which manufacturers are required to maintain records, but not register, label, meet the proposed Table 1 VOC content limits, or maintain shipping documentation. These chemically formulated consumer products are those that are not included in any of the Table 1 categories but that contain greater than five percent by weight VOC having a vapor pressure or sum of partial pressures of organic substances equal to or greater than 0.02 pounds per square inch, absolute. The applicable record keeping rules are at proposed N.J.A.C. 7:27-24.6. The provisions being proposed at new N.J.A.C. 7:27-24.2(c) are currently found at N.J.A.C. 7:27-23.6(b). The Department has separately proposed to amend Subchapter 23, Prevention of Air Pollution from Architectural Coatings and Consumer Products. That proposal, among other things, limits the scope of Subchapter 23 to architectural coatings, and, therefore, will delete the provisions at N.J.A.C. 7:27-23.6(b) being proposed herein to be included at N.J.A.C. 7:27-24.2(c).

Existing N.J.A.C. 7:27-24.2(d) regarding innovative product exemptions is proposed to be amended and relocated at proposed N.J.A.C. 7:27-24.4(i) and (j).

Proposed N.J.A.C. 7:27-24.2(d) lists the chemically formulated consumer products that are exempt from Subchapter 24. The exempt products are: architectural coatings, certain bait station insecticides, certain air fresheners and insecticides, certain adhesives, certain sealants and caulking compounds, and all hospital and medical disinfectants.

Existing N.J.A.C. 7:27-24.2(e) regarding variances is proposed to be amended and relocated at proposed N.J.A.C. 7:27-24.4(i) and (j).

Proposed new N.J.A.C. 7:27-24.2(e) lists the types of portable fuel containers that are exempt from Subchapter 24.

Existing N.J.A.C. 7:27-24.2(f) is proposed for deletion because it is being relocated with recodifications at proposed N.J.A.C. 7:27-24.4(e).

Proposed new N.J.A.C. 7:27-24.2(f) is relocated with modifications and new provisions from existing N.J.A.C. 7:27-24.2(b)1. Proposed new N.J.A.C. 7:27-24.2(f) exempts from the VOC content limits at N.J.A.C. 7:27-24.4(a) and the design standards at N.J.A.C. 7:27-24.8 consumer products that are manufactured in New Jersey or sold in New Jersey by a manufacturer or distributor so long as the consumer products are destined for sale and use outside of New Jersey. Consumer products marketed in New Jersey by retailers are not exempt from the VOC content limits and design standards. The Department's intent is to prohibit consumer products that do not comply with the VOC content limits or design standards from being sold and subsequently used in New Jersey. The amended rules require manufacturers and distributors to take reasonably prudent precautions to ensure that noncompliant consumer products are not sold, offered for sale, held for sale, or otherwise supplied to New Jersey retailers or consumers. The rule prohibits manufacturers and distributors from selling, offering for sale, holding for sale, or otherwise supplying noncompliant consumer products to New Jersey retailers, and from knowingly enabling another person to do so.

Existing N.J.A.C. 7:27-24.2(g), which pertains to labeling consumer products registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), is proposed to be relocated at N.J.A.C. 7:27-24.5(f)3 with revisions.

Proposed new N.J.A.C. 7:27-24.2(g) lists the conditions under which a manufacturer may avoid liability in the event that one of the noncompliant consumer products it manufactures for use exclusively outside of New Jersey is sold in New Jersey.

Proposed new N.J.A.C. 7:27-24.2(h) lists the conditions under which a retailer may avoid liability in the event that he or she sells, offers for sale, or holds for sale in New Jersey a consumer product that violates the VOC

content limits at N.J.A.C. 7:27-24.4(a) in the case of a chemically formulated consumer product or the design standards at N.J.A.C. 7:27-24.8(a) and (b) in the case of a PFC and/or spout. The retailer may avoid liability if the retailer can demonstrate compliance with N.J.A.C. 7:27-24.4(a) or 24.8(a) and (b), as applicable, by providing written communication, written agreements, or use of invoices, purchase orders and other contractual and billing documents which state that the retailer only accepts complying products or that the distributor or supplier will only deliver complying products.

N.J.A.C. 7:27-24.3 General provisions

Proposed new N.J.A.C. 7:27-24.3 applies to both CFCPs and PFCs, the two types of consumer products regulated under Subchapter 24.

Existing N.J.A.C. 7:27-24.3(a), which contains the table of current VOC content limits, is proposed to be amended and recodified at proposed N.J.A.C. 7:27-24.4(a). Proposed new N.J.A.C. 7:27-24.3(a) requires a manufacturer, distributor, or retailer to meet all other applicable laws and regulations, even if that manufacturer, distributor, or retailer meets the requirements of Subchapter 24.

Existing N.J.A.C. 7:27-24.3(b), which pertains to pre-use dilution instructions, is proposed to be amended and recodified at proposed N.J.A.C. 7:27-24.4(b). Proposed N.J.A.C. 7:27-24.3(b) is amended and relocated from existing N.J.A.C. 7:27-24.4(f), and requires a person to identify from whom a product was obtained and to make shipping documentation available to the Department upon the Department's request.

Existing N.J.A.C. 7:27-24.3(c), which pertains to products registered under FIFRA, is proposed to be modified and recodified at proposed N.J.A.C. 7:27-24.4(c). Proposed N.J.A.C. 7:27-24.3(c) is amended and relocated from existing N.J.A.C. 7:27-24.4(g), and establishes the procedure for asserting that information submitted to the Department is confidential.

Proposed new N.J.A.C. 7:27-24.3(d) states the Department's mailing address to which persons must send paper submittals.

Proposed new N.J.A.C. 7:27-24.3(e) requires manufacturers and distributors to state on the shipping documentation for consumer products shipped for sale in New Jersey that the products are compliant. Manufacturers, distributors and retailers must keep this documentation for five years and make it available to the Department upon request. As noted previously, manufacturers of CFCPs subject to N.J.A.C. 7:27-24.2(c) are exempt from this requirement.

Proposed new N.J.A.C. 7:27-24.3(f) requires any person who submits any document, other than a registration or re-registration, to the Department to certify that document in accordance with the certification requirements at N.J.A.C. 7:27-1.39, Certification of information.

Proposed new N.J.A.C. 7:27-24.3(g) requires the Department, when it sends a written request for information, to specify in the request the information to be reported, and it gives the Department the option of specifying, in the request, the format in which the information should be reported.

N.J.A.C. 7:27-24.4 Chemically formulated consumer products: standards

The provisions of existing N.J.A.C. 7:27-24.4, Administrative requirements, are proposed to be recodified as explained below.

Proposed N.J.A.C. 7:27-24.4 is recodified from existing N.J.A.C. 7:27-24.3 with amendments and new provisions.

Existing N.J.A.C. 7:27-24.4(a), which pertains to registration, is being amended and recodified at proposed N.J.A.C. 7:27-24.5(a).

Proposed N.J.A.C. 7:27-24.4(a) is recodified with amendments from existing N.J.A.C. 7:27-24.3(a). Table 1 sets forth the existing VOC content limits for the CFCP categories regulated under Subchapter 24. Table 1 lists the existing State VOC content limits that became operative on April 30, 1996, and the proposed State VOC content limits that will become operative on January 1, 2005 under this proposal. The table "VOC Content Limits for Chemically Formulated Consumer Products" below includes the current and proposed New Jersey VOC content limits as well as the existing Federal VOC content limits for ease of comparison. Also for ease of seeing the proposed category and limit changes, the table below is formatted similar to the proposed rule text and Table 1, with brackets indicating deletions and boldface text indicating additions. Where a Federal limit and a State limit both apply to a product category, the most stringent limit is the applicable limit. If the EPA promulgates in the future a limit that is more stringent than a State limit, the more stringent Federal limit will be the applicable limit in New Jersey. The proposed State limits are as stringent or more stringent than the existing Federal limits.

In existing Subchapter 24, Table 1 lists 23 consumer product categories. In the proposed Table 1, the VOC content limits for five of the 23 existing consumer product categories remain the same. These five categories are "bathroom and tile cleaners," "hair styling gels," "laundry prewash," "laundry starch products" and shaving creams." The remaining 18 of the 23 existing consumer product categories are proposed to be amended in some way, such as addition of a new subcategory, a change in the name of a category or subcategory, or a more stringent VOC content limit. One important change in category name is that the "household adhesives" category is changed to "adhesives." Also, the proposed Table 1 adds 22 new CFCP categories. Thus, the total number of CFCP categories is increased from 23 to 45. The most significant change is in the VOC content limits. Considering both categories and product forms, the number of regulated VOC content limits is increased from 41 to 89. These 89 VOC content limits will become operative on January 1, 2005, and supersede the existing State standards that became operative April 30, 1996. Of these 89 VOC content limits, 26 are more stringent than the existing VOC content limits, 27 are unchanged, and 36 VOC content limits are for newly added categories or subcategories. Also, of the 89 categories or subcategories of VOC content limits, three have been regulated under the Federal rule but not under the existing State rules. These three categories or subcategories, as listed in Table 1, are automotive windshield washer fluids, charcoal lighter material and structural waterproof adhesives.

VOC CONTENT LIMITS FOR CHEMICALLY FORMULATED CONSUMER PRODUCTS

Chemically Formulated Consumer Product Category	Form	Maximum Allowable VOC Content (percent by weight,[1] unless otherwise indicated) State Standard Operative Date 4/30/96-12/31/04	Federal (EPA) Standard[2] Operative Date 12/10/98	State Standard Operative Date 1/1/05
Adhesives	Aerosol:	75	75	
	Mist spray			65
	Web spray			55
	Special purpose spray adhesives:			
	Mounting, automotive engine compartment, and flexible vinyl			70
	Polystyrene foam and automotive headliner			65
	Polylolefin and laminate repair/edgebanding			60
	Contact	80	80	80
	Construction, panel, and floor covering	40	40	15
	General purpose	10	10	10
	Structural waterproof	[(Reserved)]	15	15

Air fresheners	Single-phase [aerosol] aerosols	70	70	30
	Double-phase [aerosol] aerosols	30	30	25
	[Liquid/pump] Liquids/pump sprays	18	18	18
	[Solid/gel] Solids/gels	3	3	3
Antiperspirants	[Aerosol] Aerosols	[HVOC] 60 HVOC	60 HVOC	40 HVOC 10 MVOC
	[Non-aerosol] Non-aerosols	[HVOC] 0 HVOC		0 HVOC 0 MVOC
Automotive brake cleaners				45
Automotive rubbing or polishing compounds				17
Automotive waxes, polishes, sealants or glazes	Hard paste waxes			45
	Instant detailers			3
	All other forms			15
Automotive windshield washer fluids			35	35
Bathroom and tile cleaners	Aerosols	7	7	7
	All other forms	5	5	5
Bug and tar remover				40
Carburetor [choke] or fuel-injection air intake cleaners	Non-aerosols	75	75	45
Carpet and upholstery cleaners	Aerosols			7
	Non-aerosols (dilutables)			0.1
	Non-aerosols (ready-to-use)			3.0
Charcoal lighter material			9 g/start[3]	0.02 lb start[4]
Cooking sprays[, aerosol]	Aerosols	18	18	18
Deodorants	[Aerosol] Aerosols	[HVOC] 20 HVOC	20 HVOC	0 HVOC 10 MVOC
	[Non-aerosol] Non-aerosols	[HVOC] 0 HVOC		0 HVOC 0 MVOC
Dusting aids	[Aerosol] Aerosols	35	35	25
	All other forms	7	7	7
Engine degreasers	Aerosols	75	75	35
	Non-aerosols	75	75	5
Fabric protectants		75	75	60
Floor polishes/waxes	Products for flexible flooring [material] materials	7	7	7
	Products for nonresilient flooring	10	10	10
	Wood floor wax	90	90	90
Floor wax stripper	Non-aerosol:			
	For light or medium build-up			3
	For heavy build-up			12
Furniture maintenance products[,]	[aerosol] Aerosols	25	25	17
	All other forms except solid or paste			7
General purpose cleaners	Aerosols	10	10	10
	Non-aerosols	10		4
General purpose degreasers	Aerosols			50
	Non-aerosols			4
Glass cleaners	Aerosols	12	12	12
	All other forms	8	8	
	Non-aerosols			4
Hair mousses		16	16	6
Hair shines				55
Hair sprays		80	80	55
Hair styling gels		6	6	6
Heavy-duty hand cleaner or soap				8

[Household adhesives	Aerosol	75		
	Contact	80		
	Construction and panel	40		
	General purpose	10		
	Structural waterproof	(Reserved)]		
Insecticides	Crawling bug:	40	40	
	Aerosols			15
	All other forms			20
	Flea and tick	25	25	25
	Flying bug:	35	35	
	Aerosols			25
	All other forms			35
	Foggers	45	45	45
	Lawn and garden:	20	20	
	Non-aerosols			3
	All other forms			20
	Wasp and hornet			40
Laundry prewash	Aerosol/solids	22	22	22
	All other forms	5	5	5
Laundry starch products		5	5	5
Metal polishes/cleansers				30
Multi-purpose lubricants (excluding solid or semi-solid products)				50
Nail polish removers		85	85	75
Non-selective terrestrial herbicide	Non-aerosols			3
Oven cleaners	[Aerosol] Aerosols/pump sprays	8	8	8
	Liquids	5	5	5
Paint removers or strippers				50
Penetrants				50
Rubber and vinyl protectants	Aerosols			10
	Non-aerosols			3
Sealants and caulking compounds				4
Shaving creams		5	5	5
Silicone-based multi-purpose lubricants (excluding solid or semi-solid products)				60
Spot removers	Aerosols			25
	Non-aerosols			8
Tire sealants and inflators				20
Undercoatings	Aerosols			40

Footnotes:

[1]Weight is the product's total weight, exclusive of the container and/or packaging.

[2]The standards given in this column are Federal standards included here for informational purposes only. These Federal standards are promulgated at 40 CFR 59, Subpart C, Table 1.

[3]See 40 CFR 59.208 for additional Federal requirements pertaining to charcoal lighter material.

[4]See N.J.A.C. 7:27-24.4(h) for additional State requirements pertaining to charcoal lighter material.

Existing N.J.A.C. 7:27-24.4(b), which pertains to displaying the manufacture date on the product label, is proposed to be recodified at N.J.A.C. 7:27-24.5(d) with amendments.

Proposed N.J.A.C. 7:27-24.4(b) is recodified from N.J.A.C. 7:27-24.3(b) with amendments and a new provision. Proposed N.J.A.C. 7:27-24.4(b) establishes how to determine the VOC content of a CFCP that must be diluted prior to use. The VOC content of a CFCP diluted with water or a non-VOC solvent must be determined after the minimum recommended dilution. The VOC content of a CFCP diluted with a VOC solvent must be determined after the maximum recommended dilution.

Existing N.J.A.C. 7:27-24.4(c), which pertains to date-codes, is being amended and recodified as N.J.A.C. 7:27-24.5(e).

Proposed N.J.A.C. 7:27-24.4(c) is recodified from N.J.A.C. 7:27-24.3(c) with amendments. The major modification is that the VOC content limits for CFCPs registered under FIFRA are proposed to be operative January 1, 2006, which is one year after the January 1, 2005 operative date of the proposed State VOC content limits in Table 1. The one year delay is to be consistent with the OTC model rule.

Existing N.J.A.C. 7:27-24.4(d), which pertains to records manufacturers are required to keep, is proposed to be amended and recodified at various provisions in N.J.A.C. 7:27-24.6, as explained below.

Proposed new N.J.A.C. 7:27-24.4(d) requires no limitation on the period in which a CFCP manufactured before January 1, 2005, which does not meet the new VOC content limits, may be sold in New Jersey as long as that CFCP

complies with the VOC content standard in place at the time that CFCP was manufactured and is labeled with the manufacture date or date-code whose explanation had previously been sent to the Department.

Existing N.J.A.C. 7:27-24.4(e), which pertains to information a manufacturer must send to the Department upon the Department's request, is proposed to be amended and recodified at N.J.A.C. 7:27-24.6(c).

Proposed N.J.A.C. 7:27-24.4(c) is relocated from N.J.A.C. 7:27-24.2(f) and revised. Proposed N.J.A.C. 7:27-24.4(c) lists the VOCs that can be excluded when determining compliance with VOC content limits. Proposed N.J.A.C. 7:27-24.4(c) removes the exclusion, currently found at N.J.A.C. 7:27-24.2(f)3, of any VOC that has a melting point higher than 20 degrees Celsius and does not sublime, if its vapor pressure is not known. Proposed N.J.A.C. 7:27-24.4(c) adds to these exclusions colorants and ethanols in an antiperspirant or deodorant, in certain cases, and three additional types of VOCs under the definition of "low vapor pressure VOC." The three additional types of VOCs are chemical mixtures comprised solely of compounds with unknown vapor pressure and more than 12 carbon atoms, chemical compounds with a boiling point above 216 degrees Centigrade, and VOCs that are a weight percent of a chemical mixture with a boiling point above 216 degrees Centigrade.

Existing N.J.A.C. 7:27-24.4(f) is proposed to be amended and recodified at proposed N.J.A.C. 7:27-24.6(f).

Proposed new N.J.A.C. 7:27-24.4(f) requires the most stringent (that is, lowest) VOC limit to apply to an aerosol adhesive if the adhesive could be classified in more than one CFCP category.

Existing N.J.A.C. 7:27-24.4(g), which pertains to confidentiality claims, is proposed to be amended and recodified at N.J.A.C. 7:27-24.3(c).

Proposed N.J.A.C. 7:27-24.4(g) requires a CFCP (except for general purpose cleaners, antiperspirants, and deodorant products) for which the display panel states it can be used as a consumer product in more than one CFCP category to meet the lower VOC content limit.

Proposed new N.J.A.C. 7:27-24.4(h) adds additional requirements that a person must meet in order to sell, offer for sale, hold for sale, distribute, supply, or manufacture for sale in New Jersey charcoal lighter material products on or after January 1, 2005. In order to be sold in New Jersey, on or after January 1, 2005, the charcoal lighter material product must be certified by CARB or the air pollution control agency of another state, the certification must be currently effective, and the product usage directions provided with the product must be the same as those on which the certification is based. The CARB certification is based on a South Coast Air Quality Management District (SCAQMD) certification. Currently the Department does not regulate charcoal lighter materials; however, these proposed requirements are consistent with the CARB rules and the existing Federal rules.

Proposed new N.J.A.C. 7:27-24.4(i) allows three alternative compliance options that may be used instead of complying with a VOC content limit: an Innovative Product Exemption (IPE), an Alternative Control Plan (ACP), and a variance. The IPE, ACP, or variance must have been approved by CARB or by another state that has adopted a consumer product regulation based on or substantially equivalent to the OTC Consumer Product Model Rule. An IPE is a determination that a consumer product will result in less VOC emissions due to an innovation in its formulation, design, delivery system, or some other factor. Compliance using an IPE is allowed under the existing rules at N.J.A.C. 7:27-24.2(d), which is being relocated with modifications at proposed N.J.A.C. 7:27-24.4(i), (j) and (k). A variance temporarily exempts a manufacturer from complying with the VOC content limits for a CFCP for a limited time, if compliance would cause "extraordinary economic hardship." Compliance using a variance is allowed under the existing rules at N.J.A.C. 7:27-24.2(e), which is being relocated with modifications at proposed N.J.A.C. 7:27-24.4(i), (j) and (k). An ACP is an emissions averaging program and is a new compliance option added to this rule at proposed N.J.A.C. 7:27-24.4(i), (j) and (k). Proposed N.J.A.C. 7:27-24.4(i) allows a manufacturer to use an IPE, ACP, or variance for compliance if the IPE, ACP, or variance has been approved by another state and if it is valid for use in New Jersey pursuant to proposed new N.J.A.C. 7:27-24.4(j).

Proposed new N.J.A.C. 7:27-24.4(j) lists the conditions that must be met in order for an IPE, ACP, or variance approved in another state to be valid in New Jersey. These conditions are: (1) the other state's approved IPE, ACP, or variance is currently in effect in that state; (2) the CFCP belongs to a CFCP category listed in Table 1 of N.J.A.C. 7:27-24.4(a), and the other state's VOC content limit is equal to or more stringent than the VOC content limit in Table 1; (3) for a variance, the other state's approval is based on extraordinary economic hardship, on the public interest in granting approval outweighing the public interest in reducing emissions, and on compliance being achievable expeditiously; (4) for an IPE, the manufacturer demonstrates "by clear and convincing evidence" that use of the product will result in less air emissions compared to a similar product; (5) the manufacturer has submitted to the Department the information specified at N.J.A.C. 7:27-24.4(j)5; and (6) the manufacturer's electronic registration indicates compliance by an IPE, ACP, or variance. IPE, ACP and variance provisions are included in CARB's consumer products rules, from which the OTC model rules are based. CARB and possibly other states will review and approve applications for these exemptions. The proposed six conditions above are to specify the process and criteria for using an IPE, ACP or variance in New Jersey.

Proposed new N.J.A.C. 7:27-24.4(k) provides the citation of the Department address to which a manufacturer intending to comply using an IPE, ACP, or variance must send submittals and explains how to label the envelope or package.

Proposed new N.J.A.C. 7:27-24.4(l), to prevent the release of these toxic air contaminants, prohibits the marketing in New Jersey of aerosol adhesives that contain methylene chloride, perchloroethylene, or trichloroethylene even if these aerosol adhesives meet the VOC content limits. This new subsection will be operative as of January 1, 2005.

N.J.A.C. 7:27-24.5 Chemically formulated consumer products: registration and labeling

Existing N.J.A.C. 7:27-24.5, Test Methods, is being amended and relocated at N.J.A.C. 7:27-24.7(b).

Proposed N.J.A.C. 7:27-24.5(a) is a recodification of N.J.A.C. 7:27-24.4(a) with amendments and new provisions. Proposed N.J.A.C. 7:27-24.5(a) lists registration requirements for manufacturers who manufacture CFCPs subject to N.J.A.C. 7:27-24. One new requirement, proposed at N.J.A.C. 7:27-24.5(a)1, is that a manufacturer must register or re-register a CFCP electronically, unless electronic submission would impose hardship on the manufacturer. This differs from the current rule which requires a paper registration in all cases. To submit an electronic registration/re-registration, the manufacturer must use the form located at the Department's website at http://www.state.nj.us/dep/baqp/, which is identified at N.J.A.C. 7:27-24.5(a)1. Electronic submission shall be by email, on diskette, or on CD-ROM. Registration/re-registration dates are proposed at N.J.A.C. 7:27-24.5(a)2. If a CFCP is sold in New Jersey before January 1, 2005, the manufacturer must submit the product registration between the effective date of these amended rules and January 1, 2005. If a CFCP is sold in New Jersey for the first time after January 1, 2005, and if the manufacturer intends to register this CFCP under a Table 1 category that the manufacturer has not previously registered, then the manufacturer must register the CFCP prior to selling the product in New Jersey. Proposed new N.J.A.C. 7:27-24.5(a)3 requires a manufacturer to submit a revised registration within 90 days of beginning to manufacture a product for sale in New Jersey under a category not listed in the original registration, or of changing the registration information. The website listed above will contain a registration form for registrants to use to submit registration/re-registration requirements. The contents of the registration/re-registration requirements of existing N.J.A.C. 7:27-24.4(a)1i, ii and iii are recodified as N.J.A.C. 7:27-24.5(a)4i, ii and iii. Existing N.J.A.C. 7:27-24.4(a)1iv is recodified and amended as proposed N.J.A.C. 7:27-24.5(a)4iv. Existing N.J.A.C. 7:27-24.4(a)1iv requires the registration/re-registration to include a list of CFCP categories to which the manufactured products belong, while proposed N.J.A.C. 7:27-24.5(a)4iv also allows the registration/re-registration to include a single CFCP category. Another proposed addition, at N.J.A.C. 7:27-24.5(a)4v, requires a manufacturer who is complying via an IPE, ACP, or variance to submit additional information regarding the product and the exemption in the registration or re-registration.

Proposed new N.J.A.C. 7:27-24.5(b) clarifies that registrations and re-registrations are not confidential. A member of the public may request a copy of a registration or re-registration by contacting the Bureau of Air Quality Planning at 609-984-3009.

Proposed new N.J.A.C. 7:27-24.5(c) provides a procedure by which a manufacturer may obtain Department approval to submit a registration/re-registration on paper instead of electronically. The proposed rules require the manufacturer to submit the request to a specific address, to specifically label the form's envelope, and to explain the hardship that electronic submission would impose.

The proposed rule provides a detailed list of information that a manufacturer must include on the CFCP's packaging. In addition to the labeling requirements of existing N.J.A.C. 7:27-24.4(b) and (c), recodified with amendments as N.J.A.C. 7:27-24.5(d) and (e), the manufacturer must display the day of manufacture on the CFCP's packaging, in addition to the existing requirement to display the month and year of manufacture as a date

or date-code. Another addition is that the date or date-code must be clearly displayed so that the packaging does not have to be disassembled to read it. The provision of existing N.J.A.C. 7:27-24.4(b) that exempts free samples from labeling requirements is recodified at N.J.A.C. 7:27-24.5(f)2.

If a manufacturer uses a date-code, then proposed N.J.A.C. 7:27-24.5(c) requires the manufacturer to submit its explanation of the date-code electronically, unless the Department allows the manufacturer to submit its registration/re-registration on paper. The existing requirement that a manufacturer provide the Department with the date-code explanation within 30 days of the Department's request has been removed, because proposed N.J.A.C. 7:27-24.5(c) requires the manufacturer to submit the date-code explanation to the Department with the registration/re-registration.

Proposed N.J.A.C. 7:27-24.5(f) lists the CFCPs that are exempt from the labeling requirements of N.J.A.C. 7:27-24.5(d). Two new exemptions are for products that contain no VOCs and products that contain 0.10 percent VOCs or less, by weight.

In addition to the labeling requirements above, proposed new N.J.A.C. 7:27-24.5(g) requires that aerosol adhesive products manufactured on or after January 1, 2005, clearly display on their packaging the name or abbreviation of the product's category, the category's VOC content standard, and, for a special purpose spray adhesive, the name or abbreviation of the product's substrate and/or application. If a manufacturer of an aerosol adhesive product uses an abbreviation on the product's packaging, then the manufacturer must explain the abbreviation as part of the electronic registration or re-registration. The displayed information must be readily observable, without removal or disassembly of the packaging.

Proposed new N.J.A.C. 7:27-24.5(h) lists labeling requirements, in addition to the basic requirements at N.J.A.C. 7:27-24.5(d) and (e), for non-aerosol floor wax strippers manufactured on or after January 1, 2005. The subsection requires a manufacturer to make sure the label displays a dilution ratio. The subsection also allows terms comparable to the terms "light build-up," "medium build-up" or "heavy build-up" to be used instead of these three terms.

Proposed new N.J.A.C. 7:27-24.5(i) prohibits anyone from erasing, altering, defacing, or making illegible any of the required information before the CFCP is sold to the consumer.

N.J.A.C. 7:27-24.6 Chemically formulated consumer products: recordkeeping and reporting

The Department proposes to repeal the existing rule at N.J.A.C. 7:27-24.6, Federal supersession. Existing N.J.A.C. 7:27-24.6(a) requires a USEPA VOC content limit to prevail over any differing State VOC content limit and it requires a USEPA scope of applicability for a consumer product category to prevail over any differing State scope of applicability. Existing N.J.A.C. 7:27-24.6(b) requires this subchapter's VOC content standards to be in effect if USEPA has no corresponding VOC content standard for a category of consumer products. The proposed amendments and new rules contain many more categories of CFCPs than the Federal rule, and the VOC content limits in this proposal's product categories are equal to or more stringent than the VOC content limits in the Federal rule. In the event that the USEPA promulgates a regulation with a more stringent VOC standard for a category, a manufacturer would have to comply with the Federal rule. Thus, the Federal rule would effectively supersede the State rule.

Existing N.J.A.C. 7:27-24.4(d) is being recodified as N.J.A.C. 7:27-24.6(a), and amended. Proposed N.J.A.C. 7:27-24.6(a) requires manufacturers of CFCPs that belong to any Table 1 category to keep records demonstrating compliance with a VOC content limit, which records may be test results or data, formulas and calculations. A new provision of proposed N.J.A.C. 7:27-24.6(a) requires manufacturers of CFCPs to keep records with information on each product, which information is set forth in proposed N.J.A.C. 7:27-24.6(b)3.

Proposed N.J.A.C. 7:27-24.6(b) allows the Department to require a manufacturer to submit to the Department a broad range of information regarding the CFCPs it manufactures, including, but not limited to, label information and the product contents.

Proposed new N.J.A.C. 7:27-24.6(c) lists the records that a manufacturer must maintain regarding a regulated CFCP whose category is not listed in the proposed table of VOC content limits (Table 1), but which CFCP contains greater than five percent VOC by weight, with a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (psi). Proposed N.J.A.C. 7:27-24.6(c) requires the manufacturer to maintain, for each product type, calendar year records that consist of the number of units produced, the CFCP's VOC content by weight per unit and percent weight, and the approximate number of units sold in New Jersey. This requirement is being deleted from Subchapter 23 and being proposed in Subchapter 24.

Proposed N.J.A.C. 7:27-24.6(d) is a relocation with amendments and a new provision of existing N.J.A.C. 7:27-24.4(d). Proposed N.J.A.C. 7:27-24.6(d) increases from three years to five years the period during which a manufacturer must retain records of regulated CFCPs it manufactures.

Proposed N.J.A.C. 7:27-24.6(e) is being recodified with amendments from existing N.J.A.C. 7:27-24.4(e). Proposed N.J.A.C. 7:27-24.6(e) requires a manufacturer or a distributor of a CFCP to send records to the Department within 90 days after receiving the Department's written request. Whereas the existing rule requires this information be submitted on forms provided by the Department, the proposed rule does not require this information be submitted on forms provided by the Department.

Proposed N.J.A.C. 7:27-24.6(f) is a recodification with amendments of existing N.J.A.C. 7:27-24.4(f) and will require a retailer to identify to the Department within 30 days of receiving a written request the identity of the person from whom the retailer obtained a consumer product.

Proposed new N.J.A.C. 7:27-24.6(g) requires the manufacturer of a charcoal lighter material product to send to the Department within 30 days after receiving the Department's written request documentation showing that the product has been certified by CARB or another state in accordance with N.J.A.C. 7:27-24.4(b) and whether there were any conditions in the certification.

Proposed new N.J.A.C. 7:27-24.6(h) requires the manufacturer of a CFCP to send a VOC content test report to the Department within 60 days after receiving the Department's written request to test the product.

Proposed new N.J.A.C. 7:27-24.6(i) prohibits any person from creating or changing a record required to be kept by a manufacturer, or any record and/or information submitted to or relied on by the Department, such that the record is inaccurate.

Proposed new N.J.A.C. 7:27-24.6(j) requires an IPE, ACP, and variance to be submitted in accordance with proposed N.J.A.C. 7:27-24.4(j)5 and (k).

N.J.A.C. 7:27-24.7 Chemically formulated consumer products: testing

Current N.J.A.C. 7:27-24.7, Civil or criminal penalties for failure to comply, is being recodified with new provisions as proposed new N.J.A.C. 7:27-24.12.

Proposed N.J.A.C. 7:27-24.7 is a recodification of existing N.J.A.C. 7:27-24.5, Test methods, with amendments and new provisions. Proposed new N.J.A.C. 7:27-24.7(a) requires a manufacturer, upon the Department's request, to test any of its regulated CFCPs for VOC content (or for emissions per start in the case of charcoal lighter material) using the methods specified in proposed N.J.A.C. 7:27-24.7. Proposed N.J.A.C. 7:27-24.7(b) is a recodification with amendments to N.J.A.C. 7:27-24.5(a) which allows a person to use any test method that accurately determines the concentration of VOCs, including methods issued by EPA or CARB. Proposed N.J.A.C. 7:27-24.7(b) makes the choice of test methods more restrictive by allowing two options to determine compliance: CARB Method 310 or an alternative method that accurately determines the concentration of VOCs first approved by both the Department and EPA.

Proposed N.J.A.C. 7:27-24.7(c) is a recodification of existing N.J.A.C. 7:27-24.5(b) with amendments and new provisions. Proposed N.J.A.C. 7:27-24.7(c) gives manufacturers a third option for complying with VOC content limits of CFCPs by calculation of the VOC content based on records of the amount of constituents used to make a CFCP. In contrast to existing N.J.A.C. 7:27-24.5(b), which merely states that this option is available, proposed N.J.A.C. 7:27-24.7(c) lists the requirements for determining VOC content using manufacturing records. It identifies the manufacturing records that may be used in determining compliance, the formula that must be used to calculate the VOC content, and it specifies that CARB Method 310 results take precedence over compliance demonstrated through calculations based on manufacturing records. Proposed N.J.A.C. 7:27-24.7(b) makes the choice of test methods more restrictive by allowing two options to determine compliance with the VOC limits, CARB Method 310 or an alternative method that accurately determines the concentration of VOC's first approved by both the Department and EPA. CARB Method 310 "Determination of Volatile Organic Compounds (VOC) in Consumer Products" provides the laboratory procedures and formulas which are required to determine the VOC content of the various consumer products regulated by this rulemaking.

Proposed N.J.A.C. 7:27-24.7(d) is a recodification and clarification of existing N.J.A.C. 7:27-24.5(c) to include the most current title of ASTM D4359-90 (reapproved June, 2000), "Standard Test Method for Determining whether a Material is a Liquid or a Solid." This test method is used to determine whether a material is a liquid or solid.

Proposed N.J.A.C. 7:27-24.7(e) through (i) are new. Proposed N.J.A.C. 7:27-24.7(e) contains the test method to be used to determine compliance with the charcoal lighter material standards. The test method, the "South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol," contains the procedures that must be followed for a charcoal lighter material to be in compliance and certified. Proposed N.J.A.C. 7:27-24.7(f) contains ASTM test method D86-90 (Sept. 28, 1990), including subsequent revisions. This test method is used to determine distillation points of petroleum distillate-based charcoal lighter materials. Proposed N.J.A.C. 7:27-24.7(g) contains ASTM test method E260-91, including subsequent revisions. This test method is used to determine whether a material is a "plasticizer."

Proposed N.J.A.C. 7:27-24.7(h) allows the Department to require a manufacturer to provide the Department with duplicate CFCP samples for testing. Proposed N.J.A.C. 7:27-24.7(i) lists the mailing addresses, phone numbers or website addresses from which the test methods listed in N.J.A.C. 7:27-24.7 can be obtained.

N.J.A.C. 7:27-24.8 Portable fuel containers and spill proof spouts: standards

Proposed N.J.A.C. 7:27-24.8 sets the design standards for a portable fuel container (PFC), a spout for a PFC, and a PFC that is sold with a detachable spout (hereinafter referred to as a PFC and spout).

Proposed N.J.A.C. 7:27-24.8(a) prohibits a PFC, or a PFC and spout, from being sold, offered for sale, held for sale, distributed or supplied, or manufactured for sale in New Jersey, on or after January 1, 2005, unless it has an automatic shut-off that prevents overflow when filling a fuel tank; automatically closes and seals when removed from the fuel tank being filled; has only one opening for filling and pouring; has an appropriate fuel flow rate and fill level depending on the nominal capacity of the PFC and whether "Low Flow Rate" is displayed; does not exceed a permeation rate of 0.4 grams per gallon per day; and has a manufacturer's warranty that is effective for at least one year. The requirement to provide a warranty is in the March 6, 2001, OTC "Model Rule for Portable Fuel Container Spillage Control."

Proposed N.J.A.C. 7:27-24.8(b) provides the same restrictions on spouts for PFCs except there is no requirement for only one opening or for a permeation rate.

Proposed N.J.A.C. 7:27-24.8(c) allows a PFC, spout, or PFC and spout manufactured before January 1, 2005, to be sold, offered for sale, held for sale, distributed, or supplied for sale until January 1, 2006, if the manufacture date or date-code is clearly displayed on the PFC or spout and on any if its packaging. The manufacturer must electronically register the product with the Department and explain the date-code if the manufacturer uses a date-code.

Proposed N.J.A.C. 7:27-24.8(d) exempts a PFC and/or spout from N.J.A.C. 7:27-24.8(a), (b), and (c) if it received an IPE or a variance from CARB or another state that has a PFC rule based on or substantially equivalent to the OTC Model Rule for PFCs, provided the IPE or variance meets the requirements of N.J.A.C. 7:27-24.8(e).

Proposed N.J.A.C. 7:27-24.8(e) lists the conditions that must be met in order for an IPE or variance issued by another state to be valid in New Jersey. The IPE or variance must be currently in effect in the issuing state; the product for which the manufacturer is claiming an exemption in New Jersey must be the same as the product in the other state's IPE or variance; for an IPE the manufacturer must have demonstrated to the issuing agency by clear and convincing evidence that the IPE results in cumulative VOC emissions lower than the highest emitting representative similar product; for a variance the manufacturer must meet the requirements at N.J.A.C. 7:27-24.4(j)3; and the manufacturer must have submitted to the Department the information specified in proposed N.J.A.C. 7:27-24.8(e)5.

Proposed N.J.A.C. 7:27-24.8(f) sets forth the address to which a manufacturer is to send information requested in N.J.A.C. 7:27-24.8(e)5 including approved exemptions.

N.J.A.C. 7:27-24.9 Portable fuel containers and spill proof spouts: labeling

Proposed new N.J.A.C. 7:27-24.9(a) lists the information the manufacturer must display on a spout, PFC, PFC and spout, and/or its packaging on and after January 1, 2005. Proposed new N.J.A.C. 7:27-24.9(a)1 requires a manufacturer to display on a PFC or on a PFC and spout, the words "Spill-Proof System," the manufacture date or date-code, and the representative code. The representative code identifies the product as subject to and complying with the design standards set forth in these rules. Proposed new N.J.A.C. 7:27-24.9(a)2 requires a manufacturer to display on a PFC, PFC and spout, or label, and any accompanying package the product's flow rate, and, if the product cannot be used to refuel on-road motor vehicles, the phrase "Not Intended For Refueling On-Road Motor Vehicles." Proposed new N.J.A.C. 7:27-24.9(a)3 requires a manufacturer to display on a spout's packaging, and on a spill-proof spout (or its label if sold without packaging) the phrase "Spill-Proof Spout," the manufacture date or date-code, the representative code, and the make, model number, and size of compatible PFCs. Proposed new N.J.A.C. 7:27-24.9(a)4 requires a manufacturer to display on a spill-proof spout or label and on the accompanying package the minimum flow rate, and, if the product cannot be used to refuel on-road motor vehicles, the phrase "Not Intended For Refueling On-Road Motor Vehicles."

Proposed new N.J.A.C. 7:27-24.9(b) prohibits a manufacturer from displaying the phrases "Spill-Proof Spout" or "Spill-Proof System" if a PFC or PFC and spout does not meet the requirements of N.J.A.C. 7:27-24.8.

N.J.A.C. 7:27-24.10 Portable fuel containers and spill proof spouts: recordkeeping and reporting

Proposed new N.J.A.C. 7:27-24.10(a) requires all manufacturers, starting on January 1, 2005, to maintain their compliance test records for as long as their spouts, PFCs, or PFCs and spouts are on the market in New Jersey and to make the test records available to the Department within 60 days of receiving the Department's written request.

Proposed new N.J.A.C. 7:27-24.10(b) requires manufacturers to submit IPE and variance documentation to the Department in accordance with N.J.A.C. 7:27-24.8(e)5 and (f).

Proposed new N.J.A.C. 7:27-24.10(c) requires a manufacturer who uses a date-code on its product to electronically register its spout, PFC, or PFC and spout with the Department and specifies the citations of the electronic registration procedure.

Proposed new N.J.A.C. 7:27-24.10(d) specifies the information that the manufacturer is required to include in its registration or re-registration of its PFC, spout, or PFC and spout.

Proposed new N.J.A.C. 7:27-24.10(e) sets schedules for registering a PFC, spout, or PFC and spout. If the product has been sold in New Jersey prior to January 1, 2005, the manufacturer must submit the registration to the Department between the effective date of these amendments and January 1, 2005. If the product begins to be sold in New Jersey after January 1, 2005, the manufacturer must submit the registration before selling the product in New Jersey.

Proposed new N.J.A.C. 7:27-24.10(f) requires a manufacturer who uses a date-code to re-register a previously registered product within 90 days of any change in the coding of the date-code or representative code.

Proposed new N.J.A.C. 7:27-24.10(g) allows a manufacturer to submit a paper registration or re-registration instead of registering or re-registering electronically if electronic submission would impose hardship on the manufacturer and if the Department approves the manufacturer's request to submit a paper registration or re-registration.

N.J.A.C. 7:27-24.11 Portable fuel containers and spill proof spouts: testing

Proposed new N.J.A.C. 7:27-24.11(a) requires, as of the operative date of these amendments and new rules, any manufacturer of a spout or PFC and spout to complete compliance testing before the spout or PFC and spout can be marketed for use in New Jersey. The compliance testing must show that the spout or PFC and spout qualifies as a "spill-proof system" or "spill-proof spout," as applicable. The manufacturer must use the test methods listed in proposed new N.J.A.C. 7:27-24.11(b) unless the Department approves that the manufacturer can use an alternative test method. Four CARB test methods are listed in N.J.A.C. 7:27-24.11(b). CARB test method 510 contains the procedures to determine compliance with the automatic shut-off requirements for PFC spill proof systems and spill-proof spouts. CARB test method 5100 contains the procedures to determine compliance with the automatic closure requirements for PFC spill-proof systems and spill-proof spouts. CARB test method 512 contains the procedures to determine compliance with the fuel flow rate requirements for PFC spill-proof systems and spill-proof spouts. CARB test method 513 contains the procedures to determine compliance with the permeation rate requirements for PFC spill-proof systems and spill-proof spouts.

Proposed new N.J.A.C. 7:27-24.11(c) allows a manufacturer to apply in writing to the Department for approval to use an alternate test method. However, the manufacturer must demonstrate that the alternate test method is as accurate, precise, and appropriate as the required test methods in proposed subsection (b). The Department may not approve the manufacturer's request to use an alternate method unless the method is first approved by the

Department and the USEPA. The manufacturer must submit a written request to use the alternate test method to the Department at the address listed.

N.J.A.C. 7:27-24.12 Penalties and other requirements imposed for failure to comply

Proposed N.J.A.C. 7:27-24.12(a) is a recodification of existing N.J.A.C. 7:27-24.7 with one minor grammatical change and one minor citation change.

Proposed new N.J.A.C. 7:27-24.12(b) and (c) apply respectively, to CFCPs and to PFCs and spouts. The proposed subsections allow the Department to issue an order when a regulated CFCP fails to comply with the VOC content requirements at N.J.A.C. 7:27-24.4 and when a PFC, spout or PFC and spout fails to comply with the requirements at N.J.A.C. 7:27-24.8. In the order, the Department may require the manufacturer of the product to show that the compliance test results or calculations are in error, or are not representative of the entire batch or product line from which the sample was taken, or the Department may require the manufacturer to recall from New Jersey retail outlets all its non-complying products within 30 days of submitting its test report. To assist the product recall, in this order the Department may direct any distributor to take back its product from New Jersey retail outlets. Also, in this order the Department may prohibit sale of the product in New Jersey until the manufacturer can demonstrate compliance with the VOC content requirements at N.J.A.C. 7:27-24.4 or the PFC and spout requirements at N.J.A.C. 7:27-24.8.

N.J.A.C. 7:27A-3.10 Civil administrative penalties for violation of rules adopted pursuant to the Act

Proposed N.J.A.C. 7:27A-3.10(m)24, currently reserved, establishes civil and administrative penalty amounts for violations of N.J.A.C. 7:27-24. The proposed penalty amounts are consistent with similar penalties in other Department air rules.

Social Impact

The proposed new rules and amendments will have positive social impact on the general public. VOCs present in the atmosphere are precursors to the formation of tropospheric (also known as ground-level) ozone. Adoption of these new control measures for CFCPs and PFCs would aid the State in attaining and maintaining the NAAQS for ozone by reducing VOC emissions.

The general public will benefit from the proposed new rules and amendments because ground-level ozone is a health concern in New Jersey. Ground-level ozone is breathed by people and animals and comes into contact with crops and other vegetation, as well as man-made structures and surfaces. Exposure to ozone can cause a variety of adverse effects. A known respiratory irritant, it has severe and debilitating effects on lung capacity, and can have detrimental effects on respiration. Even at low levels, ozone can cause average humans to experience breathing difficulty, chest pains, coughing, and irritation to the nose, throat and eyes. For individuals who already experience respiratory problems or who are predisposed to respiratory ailments, these symptoms can become much more severe, forcing those individuals to alter their lifestyles to avoid unnecessary exposure. In addition, chronic ozone exposure studies performed on laboratory animals indicate that long-term exposure to ozone affects lung physiology and morphology. These studies suggest that humans exposed to ozone for prolonged periods of time can experience chronic respiratory injuries resulting in premature or accelerated aging of human lung tissue.

Breathing elevated levels of ground-level ozone can:

- Decrease lung function, primarily in children active outdoors;
- Increase respiratory symptoms, such as coughing and chest pain upon inhalation, particularly in highly sensitive individuals;
- Increase hospital admissions and emergency room visits for respiratory causes among children and adults with pre-existing respiratory diseases, such as asthma;
- Cause inflammation of the lungs;
- Cause possible long-term damage to the lungs; and
- Promote allergic reactions (see 62 Fed. Reg. 60317, (November 7, 1997)).

In addition to its health effects, ground-level ozone interferes with various plants' ability to produce and store nutrients (See A USEPA Fact sheet on the New 8-Hour Ozone and Fine (2.5 microns) Particulate Matter Health Standards, July 1997). This causes the plants to become more susceptible to disease, insects, other pollutants, and harsh weather. This impacts annual crop production throughout the United States, resulting in significant losses, and injures native vegetation and ecosystems. Ground-level ozone also damages certain man-made materials, such as textile fibers, dyes, and paints.

In addition, some VOCs are associated with the formation of $PM_{2.5}$ (minute particulate matter of 2.5 microns or less equivalent aerodynamic diameter), either through condensation of VOCs or complex reactions of VOCs with other compounds in the atmosphere. These fine particulates are known as secondary organic aerosols. Initial monitoring data indicates that these carbonaceous particulates, which include secondary compounds, can be a significant component of total fine particulates, particularly in urban areas (Amar, Praveen, Northeast States For Coordinated Air Use Management (NESCAUM) Progress Report on Determination of Fine Particles Concentrations and Chemical Composition in the Northeastern US, 1995, and NESCAUM, Regional Haze and Visibility in the Northeast and Mid-Atlantic States, draft report, November 30, 2000). However, the extent to which secondary organic aerosols contribute to the carbonaceous component is not presently clear.

Fine particulates have been associated with a number of adverse human health effects including premature death, aggravation of respiratory and cardiovascular disease, changes in lung function and increased respiratory symptoms, changes to lung tissues and structure, and altered respiratory defense mechanisms (USEPA, National Ambient Air Quality Standards for Particulate Matter, proposed rule, 61 Fed. Reg. 65638, December 13, 1996). Therefore, if VOC emissions are lowered, the adverse health impacts from fine particulates are lowered as well.

Lowering the VOC content in consumer products is also expected to lead to a reduction of hazardous air pollutants (HAPs) (substances listed in 1990 Clean Air Act Title III, Sec. 112(b)) and toxic substances (substances listed at N.J.A.C. 7:27-17.3 Table 1). HAPs are substances that cause serious health and environmental effects. Health effects include cancer, birth defects, nervous system problems and death due to massive accidental releases (USEPA Plain English Guide to the Clean Air Act, April 1993). Many of the VOCs used in CFCPs are HAPs also, such as ethylene-based glycol ethers, methyl ethyl ketone, methanol, toluene, methyl bromide, xylenes, 1,3-dichloropropene and chlorobenzene. HAPs in gasoline, which are also VOCs, include benzene, toluene, xylenes, ethylbenzene, hexane and methyl tertiary butyl ether. Benzene is also classified as a toxic substance (substances listed in N.J.A.C. 7:27-17.3 Table 1) and is a human carcinogen. The proposed rules and amendments also prohibit the use in aerosol adhesives of methylene chloride, perchloroethylene or trichloroethylene, which are HAPs, toxic substances and probable human carcinogens.

In order to achieve VOC emission reductions some manufacturers will likely have to reformulate some products to produce products that perform the same function, but have a lower VOC content. It is a possibility that when products are reformulated some attributes of the product may change. Manufacturers may incur some increased costs associated with reformulation and there is a possibility that manufacturers may pass on some or all of the increased costs onto consumers. As discussed in the Economic Impact below, the estimated cost increase per product is not significant and for some products reformulation may result in a decrease in the cost of production. Moreover, the cost of complying with the proposed rules and amendments may be less than estimated because manufacturers of nationally marketed products will have already reformulated some products to comply with the similar regulations already in place in California.

Economic Impact

Chemically Formulated Consumer Products

The analysis and discussion herein is based on the economic analyses performed by CARB, for VOC limits more stringent than the existing New Jersey and Federal rules. California has regulated VOCs in consumer products through four main phases of regulations, Phase I in 1990, Phase II in 1991, Phase III or Midterm Measures in 1997 and Midterm Measures II in 1999. The proposed New Jersey rules are primarily based on the most stringent of California's four phases of regulation. The majority of the proposed VOC limits, which are more stringent than the existing New Jersey and Federal rules, are contained in California's more recent Midterm Measures and Midterm Measures II rules. Information regarding the CARB economic analyses can be found on the CARB Consumer Products website at http://www.arb.ca.gov/consprod/consprod.htm. The Department believes that consumer product sales in California are comparable to those in the northeast, proportioned by population, for the purposes of conducting this economic analysis. In addition, many manufacturers market consumer products nationally.

Relying on CARB's analyses provides an overall conservative approach. The Department's cost estimates may be somewhat inflated, since the Department conservatively assumed that manufacturers will incur the same costs to comply with the proposed New Jersey rules as they incurred to comply with CARB's regulations. In reality, manufacturers of nationally

marketed products will incur some costs, such as reformulation costs, only once, to comply with the CARB regulations. In addition, manufacturers will have to reformulate for the other states in the northeast region adopting the OTC model rule.

CARB's data and spreadsheets were adjusted to account for differences in the regulated products between California and New Jersey. There are differences because the proposed New Jersey rules do not regulate windshield washer fluids and nail polish removers at the same VOC limits as the CARB rules. Even so, the results of New Jersey's economic analysis are similar to California's.

VOC limits for hair spray, antiperspirants and deodorants, and adhesives were proposed in California prior to their Midterm Measures proposal. The cost data CARB used for these categories was included in the Department's analysis, but may be overestimated. CARB subsequently determined that some of their assumptions for Phase I and II non-recurring costs were too high. In addition, the limits originally proposed in California for aerosol antiperspirants and adhesives were re-evaluated by CARB based on industry comments and determined to be infeasible. Therefore, the costs to reformulate these products in CARB's analysis are overestimated.

CARB also used a conservative approach in assuming there would be no cross-line technology transfers. For example, CARB did not account for potential savings in one-time research and development and other costs that could apply to several products that a single manufacturer produces. While CARB was aware that companies undertake these types of efforts and similar efforts to reduce costs whenever possible, CARB found it difficult to quantify such cost savings, given the complexity and high degree of competitiveness in the consumer products industry.

The CARB Economic Impact analysis, on which the Department's analysis is based, evaluated the proposed VOC limits for cost-effectiveness, their potential effects on businesses subject to the limits, and the potential cost impacts to consumers. In conducting its economic analysis, CARB consulted a combination of publicly available financial databases (Dun and Bradstreet, Ward's Business Directory of U.S. Manufacturing Industries), numerous consumer and commercial products surveys, and industry journals and literature, such as the Chemical Market Reporter. CARB also incorporated projected cost information provided by industry representatives.

In addition, New Jersey was part of a regional group, organized by the OTC and made up of OTC state representatives, that met with representatives of the CFCP industry several times from July 2000 to January 2001. In developing the model rule, the regional group attempted to minimize the economic impact to manufacturers by listening to the concerns of industry, maintaining uniformity with the CARB rules, making changes to the CARB rules where appropriate, minimizing reporting, recordkeeping and labeling requirements, providing flexibility options, streamlining the processing of flexibility options, and setting compliance dates either equal to or later than those in California.

Additional details on how these estimates were derived are set forth in a report titled "Estimated VOC Emission Reductions and Economic Impact Analysis for Proposed Amendments to Chemically Formulated Consumer Products," which may be downloaded from the Department's website at http://www.state.nj.us/dep/aqm or obtained by telephoning (609) 633-0530.

Cost-effectiveness

The cost-effectiveness of a limit is generally defined as the ratio of total dollars to be spent to comply with the limit (as an annual cost) to the mass reduction of the pollutant(s) to be achieved by complying with that limit (in annual pounds or tons). The cost-effectiveness is presented to show the proposal's cost efficiency in reducing a pound of VOC. First, annual costs were calculated. Annual costs include annualized non-recurring costs (for example, total research and development, product and consumer testing, equipment purchases/modifications, etc.) and annual recurring costs (for example, raw materials, labeling, packaging, etc.).

For each product category, CARB estimated non-recurring and recurring "low" and "high" costs. These "low" and "high" costs are a range of estimated costs. Non-recurring fixed costs were annualized using the cost recovery method, with a cost recovery factor (CRF) of 0.16274 corresponding to 10 percent interest over a 10-year project horizon.

The projected annual costs then became the inputs for determining the three main outputs of the economic analysis: estimated cost-effectiveness, the potential business impacts and the potential consumer impacts. The projected annual costs were divided by the number of product units sold to result in a cost per unit. The estimated cost-effectiveness in dollars per pound of VOC reduced, and estimated cost in dollars per unit, by product category, are shown in Table 1. A summary of the overall cost analysis is shown in Table 2.

Table 1

Cost Analysis Summary by Product Category for Chemically Formulated Consumer Products Based on Proposed Amendments to N.J.A.C. 7:27-24

	Estimated Cost-effectiveness ($/lb VOC reduced)			Estimated Cost per Unit ($/unit)		
CATEGORY	Low	High	Avg.	Low	High	Avg.
MIDTERM MEASURES II						
AUTOMOTIVE CARE:						
Automotive Windshield Washer Fluids	NA	NA	NA	NA	NA	NA
Automotive Brake Cleaners	$0.44	$1.20	$0.82	$0.02	$0.03	$0.02
Carburetor, Choke Cleaners	$0.09	$0.19	$0.14	$0.02	$0.04	$0.03
Engine Degreasers (Aerosols)	$0.35	$0.67	$0.51	$0.04	$0.06	$0.05
Engine Degreasers (Non-Aerosols)	-$0.49	$0.27	$0.00	$0.00	$0.00	$0.00
Tire Inflator and Sealant	$1.50	$1.59	$1.54	$0.25	$0.26	$0.26
		ERWA =	$0.38			
HOUSEHOLD CARE:						
Construction, Panel, and Flooring Adhesives	$1.64	$2.02	$1.83	$0.16	$0.19	$0.17
Double-Phase Aerosol Air Freshener	$0.75	$0.79	$0.77	$0.04	$0.04	$0.04
Furniture Maintenance Products (Aerosols)	$0.47	$0.82	$0.64	$0.03	$0.04	$0.03
General Purpose Cleaners (Dilutables)	-$3.19	-$3.92	$0.00	$0.00	$0.00	$0.00
General Purpose Cleaners (Ready-to-Use)	$1.97	$3.17	$2.57	$0.03	$0.04	$0.03
General Purpose Degreasers (Dilutables)	-$1.18	-$1.32	$0.00	$0.00	$0.03	$0.01
General Purpose Degreasers (Ready-to-Use)	-$0.42	$0.00	$0.00	$0.00	$0.04	$0.02
General Purpose Degreaser/Solvent Parts Cleaner (Aerosol)	$0.25	$0.36	$0.30	$0.11	$0.16	$0.13
Glass Cleaners (Dilutables)	-$0.45	-$0.22	$0.00	$0.00	$0.00	$0.00
Glass Cleaners (Ready-to-Use, Non-Aerosol)	-$0.51	$0.30	$0.00	$0.00	$0.01	$0.01
Sealant and Caulking Compounds	-$0.18	$0.14	$0.00	$0.00	$0.01	$0.00
		ERWA =	$0.68			
PERSONAL CARE:						
Hair Mousses	$0.75	$2.56	$1.65	$0.03	$0.09	$0.06
Nail Polish Remover	NA	NA	NA	NA	NA	NA
		ERWA =	$1.65			

PESTICIDES:						
Insecticide Crawling Bug (Aerosols)	$0.58	$2.27	$1.43	$0.02	$0.07	$0.05
Insecticide Flying Insect (Aerosols)	$0.77	$6.31	$3.54	$0.04	$0.28	$0.16
Insecticide Lawn and Garden (Non-Aerosol)	-$0.16	$0.28	$0.06	$0.00	$0.00	$0.00
		ERWA =	$1.17			
MIDTERM MEASURES II TOTALS	MIN		-$3.19		MIN	$0.00
	MAX		$6.31		MAX	$0.28
	OVERALL ERWA		$0.67		SWA	$0.02
MIDTERM MEASURES I						
AUTOMOTIVE CARE:						
Automotive Rubbing/Polishing (all forms)	-$0.78	-$0.24	$0.00	$0.00	$0.00	$0.00
Automotive Wax, Polish, Sealant, Glaze (semi and all other)	$0.46	$1.01	$0.74	$0.09	$0.13	$0.11
Automotive Wax, Polish, Sealant, Glaze (hard paste)	-$0.32	-$0.14	$0.00	$0.00	$0.00	$0.00
Automotive Wax, Polish, Sealant, Glaze (instant detailer)	-$0.28	$0.89	$0.30	$0.00	$0.00	$0.00
Bug and Tar Remover	-$0.07	$0.64	$0.28	$0.00	$0.07	$0.03
Multi-Purpose Lubricant (excl. solid/semisolid), Tier 1	$0.18	$0.34	$0.26	$0.17	$0.18	$0.18
Multi-Purpose Lubricant (excl. solid/semisolid), Tier 2	$1.84	$1.87	$1.86			
Penetrant (excl. solid/semisolid), Tier 1	$0.35	$2.45	$1.40	$0.05	$0.18	$0.11
Penetrant (excl. solid/semisolid), Tier 2	$0.20	$0.62	$0.41			
Rubber and Vinyl Protectant (aerosol)	$1.08	$1.72	$1.40	$0.47	$0.60	$0.53
Rubber and Vinyl Protectant (non-aerosol)	$0.03	$0.40	$0.22	$0.01	$0.13	$0.07
Silicone-based Multi-Purp. Lubricant (excl. solid/semi)	$0.95	$1.70	$1.33	$0.33	$0.53	$0.43
Undercoating (aerosol)	$0.25	$1.46	$0.85	$0.03	$0.19	$0.11
		ERWA =	$0.76			
HOUSEHOLD CARE:						
Carpet and Upholstery Cleaner (aerosol)	$2.32	$7.11	$4.71	$0.04	$0.11	$0.08
Carpet and Upholstery Cleaner (non-aerosol, dilutable)	-$1.28	$0.51	$0.00	$0.00	$0.00	$0.00
Carpet and Upholstery Cleaner (non-aerosol, RTU)	-$1.44	-$1.09	$0.00	$0.00	$0.00	$0.00
Floor Wax Stripper (non-aerosol)	-$0.56	-$0.35	$0.00	$0.00	$0.00	$0.00
General Purpose Degreaser (aerosol)	$0.30	$0.92	$0.61	$0.11	$0.31	$0.21
General Purpose Degreaser (non-aerosol)	-$0.05	$0.17	$0.06	$0.00	$0.00	$0.00
Metal Polish or Cleaner	-$0.49	-$0.37	$0.00	$0.00	$0.00	$0.00
Paint Remover or Stripper, Tier 1	-$3.58	-$0.33	$0.00	$0.00	$0.00	$0.00
Paint Remover or Stripper, Tier 2	-$0.81	-$0.01	$0.00			
Spot Remover (aerosol)	$0.40	$6.06	$3.23	$0.00	$0.28	$0.14
Spot Remover (non-aerosol)	-$1.21	$0.02	$0.00	$0.00	$0.00	$0.00
		ERWA =	$0.13			
PERSONAL CARE:						
Hair Shine	$1.61	$1.73	$1.67	$0.56	$0.60	$0.58
Heavy Duty Hand Cleaner or Soap, Tier 1	$0.40	$1.11	$0.76	$0.25	$0.59	$0.42
Heavy Duty Hand Cleaner or Soap, Tier 2	$3.43	$7.73	$5.58			
		ERWA =	$2.00			
PESTICIDES:						
Non-Selective Terrestial Herbicide	$0.18	$0.26	$0.22	$0.02	$0.02	$0.02
Wasp and Hornet Insecticide	$0.00	$0.32	$0.16	$0.00	$0.03	$0.01
		ERWA =	$0.21			
MIDTERM MEASURES I TOTALS	MIN		-$3.58		MIN	$0.00
	MAX		$7.73		MAX	$0.60
	OVERALL ERWA		$0.68		SWA	$0.03
PRIOR TO CA MIDTERM MEASURES AND MORE STRINGENT THAN FEDERAL RULE						
Hair spray	$2.10	$2.50	$2.30			
Anti-perspirants and Deodorants	$0.54	$1.30	$0.92			
Household Adhesives (see Note 8 below)	$0.02	$0.40	$0.21	$0.02	$0.51	
GRAND TOTALS	MIN		-$3.58		MIN	$0.00
	MAX		$7.73		MAX	$0.60
	OVERALL ERWA		$1.15		SWA	$0.03

Notes:

1. Calculations and footnotes are based on spreadsheets, formulas and data from the following CARB staff reports:

   "Proposed Regulation to Reduce VOC Emissions from Consumer Products, Aug 1990"
   "Proposed Amendments to the Statewide Regulation to Reduce VOC Emissions from Consumer Products Phase II, Oct 1991"
   "Initial Statement of Reasons for Proposed Amendments to the California Consumer Products Regulation, June 6, 1997"
   "Initial Statement of Reasons for Proposed Amendments to the California Consumer Products Regulation, Sept 10, 1999"

   The CARB data in this table has been modified by the Department to account for the differences between the CARB rule and the OTC model rule (most notably, windshield washer fluids and nail polish removers).

2. ERWA = emission reduction-weighted average
3. SWA = sales weighted average
4. Avg. Cost-effectiveness shown as "$0.00" means the average of the low and high cost-effectiveness for the category was either 0 or negative.

5. Non-recurring fixed costs annualized using Cost Recovery Method, with a Cost Recovery Factor (CRF) of 0.16274 corresponding to 10 percent interest over a 10 year project horizon.
6. For non-recurring costs, "low" and "high" refer to range of estimated fixed costs; for recurring costs, "low" and "high" refer to "All Other" ingredients assumed to cost $3.50/lb and $7.00/lb, respectively, unless otherwise noted in individual category cost spreadsheets.
7. For wasp and hornet insecticide, the "low" and "high" recurring costs shown are arithmetic averages of the applicable ranges for this category.
8. The cost analysis results for household adhesives are overestimated because CARB subsequently changed the VOC limit requirement for household adhesives, which lowered industry costs.

Table 2

Cost Analysis Summary for Chemically Formulated Consumer Products Based on Proposed Amendments to N.J.A.C. 7:27-24

ESTIMATED COST-EFFECTIVENESS ($/pound of VIC reduced)	Minimum (by product category	net savings
	Maximum (by product category	$7.73
	ERWA for hair spray	$2.25
	ERWA hair spray not included	$0.70
	ERWA hair spray not included	$1.15
ESTIMATED COST PER UNIT ($/unit)	Minimum	net savings
	Maximum	$0.60
	SWA	$0.30

Notes:

ERWA = emission reduction-weighted average
SWA = sales weighted average

As shown in Table 1, the estimated cost-effectiveness of the proposed limits for each product category ranges from no cost (and in some cases a net savings) to approximately $7.73 per pound of VOC reduced. The cost-effectiveness lower range includes paint remover or stripper, dilutable general purpose cleaners, and non-aerosol carpet and upholstery cleaners. The cost-effectiveness upper range includes heavy duty hand cleaner, aerosol carpet and upholstery cleaner, spot remover, insecticides, and hair spray.

Another useful calculation is the emission reductions-weighted average (ERWA) cost-effectiveness. This value is obtained by multiplying the emission reductions for each product category by its associated cost-effectiveness, then taking the sum of these multiplications and dividing by the sum of the total emission reductions for all the proposed limits. The ERWA cost-effectiveness accounts for the relative magnitude of emission reductions and the relative efficiency of each limit in achieving those reductions.

The estimated ERWA cost-effectiveness is $1.15 per pound of VOC reduced or $2,300 per ton of VOC reduced. The estimated ERWA cost-effectiveness excluding hair spray is $0.70 per pound. The estimated cost-effectiveness for hair spray of $2.25 per pound significantly affects the ERWA due to the higher cost per pound estimated from this category.

Potential Business Impact

The proposed rules and amendments for CFCPs would primarily impact manufacturers of these products, since they may have to reformulate their products. Businesses that market, distribute, supply, sell or use these consumer products may also be affected by the proposed rules and amendments. Businesses that supply ingredients and equipment to manufacturers of the products may also be impacted by the proposed rules and amendments. A mitigating factor to retailers is that most products manufactured prior to January 1, 2005 may still be sold in New Jersey even if they do not meet the proposed VOC limits. However, the proposed rules and amendments prohibit the manufacturer or sale after January 1, 2005 of any aerosol adhesive containing methylene chloride, perchloroethylene or trichloroethylene or that exceeds the proposed VOC limits.

Information regarding manufacturers of CFCPs located in New Jersey was obtained from the U.S. Census Bureau report, 1997 Economic Census, Manufacturing, issued May 2000, which provides a list of manufacturers by North American Industry Classification System (NAICS). However, the NAICS is much broader than the categories in the proposed rules and amendments, and also includes manufacturers of products that are not regulated by these rules. Also, some of the establishments in the report may be a single company with different locations in New Jersey. The U.S. Census Bureau report does not indicate how many of the manufacturers are small businesses.

According to the U.S. Census Bureau report, there are 179 manufacturing establishments in New Jersey classified under soap, cleaning compound, and toilet preparation manufacturing (perfumes, shaving preparations, hair preparations, face creams, and other cosmetics). The 179 establishments consist of 88 soap and cleaning compound manufacturing establishments and 91 toilet preparation manufacturing establishments. The 88 soap and cleaning compound manufacturing establishments consist of 41 soap and other detergent manufacturing establishments, 28 polish and other sanitation goods manufacturing establishments and 19 surface active agent manufacturing establishments. The report also shows two manufacturing establishments in New Jersey classified as pesticide and other agricultural chemical manufacturing establishments, and 53 manufacturing establishments in New Jersey classified as adhesive manufacturing establishments.

The New Jersey Department of Labor (NJDOL), Trends in Employment and Wages, 2000, shows 211 manufacturing establishments in New Jersey classified as soap, detergents, cleaning preparations, perfumes, cosmetics and other toilet preparations. Although the NJDOL publication is more recent than the U.S. Census Bureau report, the NJDOL publication uses the older Standard Industrial Classification (SIC) system, which is broken down into fewer categories than the newer NAICS.

According to a representative of the Consumer Specialty Products Association, Inc. (CSPA), 43 of their member companies have facilities in New Jersey. Nationwide, most of CSPA's 220 plus member companies are small businesses. Three of their members in New Jersey are small businesses.

The business impact analysis conducted by CARB assumed that all of the costs will be absorbed by manufacturers, which may not be the actual effect because some or all of the costs may be passed on to the consumer. The CARB conducted a return on owner's equity (ROE) analysis. ROE is used to measure profitability and was calculated by dividing the net profit by the net worth. Compliance cost was estimated for each business in the analysis. The estimated cost per unit is shown above in Table 1. The compliance cost was than subtracted from net profit data.

The analysis showed a change in ROE from no change to approximately five percent decrease. The lower range includes the perfume, cosmetics and other toilet preparations industry. The upper range includes the soap, detergents and specialty cleaners industry. The average calculated decrease in ROE was approximately 1.4 percent for CARB's Midterm Measures II and approximately 2.32 percent for CARB's Midterm Measures. A decrease of 10 percent is used by CARB as a threshold to indicate a potentially significant impact on profitability. According to CARB, this threshold is consistent with the thresholds used by USEPA and others. Therefore, the CARB economic analysis concluded that most manufacturers would be able to absorb the cost of the proposed rules and amendments with no significant adverse economic impacts.

In addition, the ROE analysis for the proposed limits may overestimate the impact on business because it assumes that all of the costs of the proposed limits will be absorbed by manufacturers. Some of the costs may be passed on to the consumer. The analysis also does not quantify the extent of cost mitigation due to "technology-transfer" between product lines and from third-party manufacturers (that is, contract fillers) who fill essentially equivalent products for a number of competing businesses.

The proposed rules and amendments will primarily impact manufacturers; however, other industries could also be impacted to a lesser amount, more difficult to quantify. These industries include distributors, retailers, and upstream suppliers who supply containers, valves, solvents, propellants, and other chemicals used in consumer products.

Upstream suppliers could potentially be impacted by the proposed rules and amendments. Manufacturers may purchase different solvents, propellants,

and other materials for their reformulated products. They may also purchase different containers, valves, or other components for their reformulated products. However, the Department does not expect these changes to result in a significant adverse impact on the affected industries because chemical companies generally supply many different industries. Moreover, many of the upstream suppliers also provide the alternative products that manufacturers will be use in their reformulated products. Some upstream suppliers may actually benefit since the proposed rules and amendments are likely to create new or increased demand for alternative materials to be used in compliant formulations.

Distributors could be impacted if some manufacturers decide to carry a dual inventory of products. Most manufacturers that were contacted by CARB have indicated that they will not manufacture dual inventories because dual-distribution systems are expensive to establish and maintain. Distributors and retailers may be impacted if the potential increase in costs of products dampen demand for the products. The potential consumer impact analysis assumes that manufacturers, distributors and retailers pass on any additional compliance costs to the consumers. This may be conservative because the manufacture may absorb some or all of the cost of compliance. Based on the potential consumer impact analysis, discussed below, the Department does not anticipate any significant adverse economic impacts for distributors and retailers.

Impacts to businesses that use CFCPs would be similar to the potential additional costs a consumer would experience as discussed below in "Potential Consumer Impact." Based on the consumer impact analysis, the Department does not anticipate any significant adverse economic impacts for businesses who use CFCPs.

CARB's economic analysis concluded that most manufacturers will be able to absorb the cost of the proposed rules and amendments with no significant adverse economic impact. However, some individual businesses may be adversely affected by this regulatory action. The proposed rules and amendments may impose extraordinary economic hardship on some businesses with small or no margin of profit. These businesses may be able to use the variance provision of the proposed rules and amendments to extend the deadline by which they must comply, and thereby minimize the cost impacts. They may also be able to use the innovative product exemption or the alternative control plan exemption. New Jersey accepts variances, innovative product exemptions and alternative control plan exemptions only if they have been approved by CARB or another state which has a rule based on the OTC model rule.

Potential Consumer Impact

The estimated cost per unit that the manufacturers may pass on to the consumers by raising the price of products that need to be reformulated is discussed below. However, this estimate is conservative because the manufacturers may absorb some or all of the costs of compliance.

As shown in Table 1, the estimated cost per unit ranges from no cost increase (net savings or no cost for various categories) to approximately $0.60 per unit of product. The lower range includes automotive wax, polish, sealant, glaze, insecticides, and non-aerosol carpet and upholstery cleaners. The upper range includes rubber and vinyl protectant, hair shine, heavy duty hand cleaner, and silicone-based multi-purpose lubricant. This upper range does not include household adhesives, which are overestimated because CARB subsequently changed the VOC limit requirement for household adhesives, thereby lowering the figure for industry costs. When averaged over the sales volume for each category, the estimated sales-weighted average cost per unit is approximately $0.03 per unit. Based on the economic analysis, the Department does not anticipate any significant adverse effects on consumers.

Results Summary

The estimated cost-effectiveness of the proposed rules and amendments for CFCPs was estimated to be $2,300 per ton of VOC. The estimated cost per unit ranges from no cost increase (net savings or no cost for various categories) to approximately $0.60 per unit of product, with a sales weighted average cost per unit of $0.03 per unit. Based on the Economic Impact analysis, the Department believes the proposed rules and amendments are cost-effective. The Department does not anticipate significant adverse economic impact on manufacturers, distributors, retailers, businesses that use CFCPs or consumers. These costs of compliance may be absorbed by the manufacturer, passed on to the consumer or shared.

Portable Fuel Containers

The analysis and discussion herein is based on a CARB staff report (CARB, Hearing Notice and Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Public Hearing to Consider the Adoption of Portable Fuel Container Spillage Control Regulations, August 6, 1999) and a report prepared by E.H. Pechan and Associates, Inc. (Control Measure Development Support Analysis of Ozone Transport Commission Model Rules, March 31, 2001).

The Department's cost estimates may be somewhat inflated, since the Department conservatively assumed that manufacturers will incur the same costs to comply with the proposed New Jersey rules as they incurred to comply with CARB's regulations. In reality, manufacturers of nationally marketed products will incur some costs, such as redesign costs, only once, to comply with the CARB regulations. In addition, manufacturers will have to redesign for the other states in the northeast region adopting the OTC model rule.

A summary of the cost analysis is discussed below. Additional details on how these estimates were derived are set forth in a report titled "Estimated VOC Emission Reductions and Economic Impact Analysis for Proposed Portable Fuel Container Rule," which may be downloaded from the Department's website at http://www.state.nj.us/dep/aqm or obtained by telephoning (609) 633-0530.

Cost-effectiveness

The cost-effectiveness is generally defined as the ratio of total dollars to be spent to comply with the rules (as an annual cost) to the mass reduction of the pollutant(s) to be achieved by complying with the rules (in annual pounds or tons). First annual costs were calculated. Annual costs include annualized non-recurring costs (for example, total research and development, product and consumer testing, equipment purchases/modifications, etc.) and annual recurring costs (for example, raw materials, labeling, packaging, etc.).

The projected annual costs then became the inputs for determining the three main outputs of the economic analysis: estimated cost-effectiveness, the potential business impacts and the potential consumer impacts. The projected annual costs were divided by the number of product units sold to result in a cost per unit.

The estimated cost per unit calculated by CARB for PFCs to comply with the proposed rules are shown in Table 3. Table 4 presents the estimated cost-effectiveness of the proposed rules in 1998 dollars.

Table 3

Estimated Sales Price for Portable Fuel Containers[1]

Size of Container (gallons)	Percent of Total Containers (percent)	Average Unit Cost of Container (1998 $)	Estimated Unit Cost of Container which Meets Rule Specifications (1998 $)	Incremental Cost to Meet Rule Requirements
1–1.5	39	$2.62	$9.00	$6.38
2–2.5	36	$3.79	$12.00	$8.21
5–6	25	$7.44	$18.00	$10.56

Note:

1. CARB, Hearing Notice and Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Public Hearing to Consider the Adoption of Portable Fuel Container Spillage Control Regulations, August 6, 1999

Table 4

Cost-effectiveness of Portable Fuel Container Rule in 2007 Based on Proposed Rules in N.J.A.C. 7:24-24[1]

Estimated of Containers Sold in New Jersey Annually (for 1996)	Incremental Cost ($/year) [1998 dollars]	VOC Reductions [in 2007] (tons/year)	VOC Reductions (tons/day)	Cost-effectiveness ($/ton of VOC Reduced)
295,071	$2,385,680	2,406	6.59	991

Note:

1. E.H. Pechan and Associates, Inc., "Control Measure Development Support Analysis of Ozone Transport Commission Model Rules," March 31, 2001, Page 13.

Potential Business Impact

The proposed PFC rules would primarily impact manufacturers of PFCs and spouts who may have to redesign their products. Businesses that market, distribute, supply, sell, or use these PFCs may also be affected by the proposed rules. Also, potentially affected are businesses that supply parts to these manufacturers. Manufacturers of PFCs must comply with the proposed performance standards by January 1, 2005. PFCs manufactured prior to January 1, 2005, which do not comply with the performance standards, may be sold until January 1, 2006.

The PFC and spout industry consists of 21 manufacturers nationwide, of which 13 are small manufacturers (fewer than 100 employees). None of these manufacturers is located in New Jersey. PFCs and spouts generally account for only a small portion of these manufacturers' product portfolio. Table 5 provides a list of the large and small (fewer than 100 employees) PFC and spout manufacturers.

Table 5

Large and Small Portable Fuel Container and Spout Manufacturers

Large Manufacturers	Small Manufacturers[1]
Blitz U.S.A.	Bomatics
Briggs & Stratton Corp.	CCI Products, Inc.
Chilton Products	Environ Can, Inc.
Eagle Manufacturing Co.	Gas-O-Haul
Hopkins Manufacturing	Instep, Inc.
Just Rite Manufacturing	Jazz Products
Protectoseal Co.	Midwest Can Co.
Wedco Molded Products	Mooses Offroad
	No-Spill Research, Inc.
	S&K Products
	Scribner Plastics
	Tracy International
	Vemco, Inc.

Note:

1. Fewer than 100 employees

During their fact gathering, CARB determined that several manufacturers already produce PFCs that meet the majority of the performance standards in these proposed rules. The cost analysis shows that the proposed rules will increase average annual costs by about $2.4 million. CARB assumed that the market will allow manufacturers to pass on the entire cost increase to consumers because of the low relative price and long lifetime of PFCs, and because there will be few legal substitutes available to consumers. As a result, the proposed rules are not expected to have a noticeable adverse impact on the affected manufacturers.

Table 6 lists the estimated number of PFCs in New Jersey based on the CARB survey results.

Table 6

1996 Portable Fuel Container Populations:
Number of Units in New Jersey[1]

Sector	Container Population
Residential	2,895,118
Commercial	55,592
Total	2,950,710

Note:

1. E.H. Pechan and Associates, Inc., "Control Measure Development Support Analysis of Ozone Transport Commission Model Rules," March 31, 2001, Page 13.

The proposed rules will primarily impact manufacturers; however, other industries could also be impacted to a lesser amount, more difficult to quantify. These industries include distributors, retailers, upstream suppliers, and businesses that use PFCs.

Distributors and retailers may be impacted if the potential increase in costs of products dampen demand for the products. The potential consumer impact analysis assumes that manufacturers, distributors and retailers pass on any additional compliance costs to the consumers. Based on the potential consumer impact analysis, discussed below, the Department does not anticipate any significant adverse economic impacts for distributors and retailers.

Impacts to businesses that use PFCs would be similar to the potential additional costs a consumer would experience as discussed below in "Potential Consumer Impact." Based on the consumer impact analysis, the Department does not anticipate any significant adverse economic impacts for businesses who use PFCs.

CARB's economic analysis concluded that most manufacturers will be able to absorb the cost of the proposed rules with no significant adverse economic impact. However, some individual businesses may be adversely affected by this regulatory action. The proposed rules may impose extraordinary economic hardship on some businesses with small or no margin of profit. These businesses may be able to use the variance provision of the proposed rules and amendments to extend the deadline by which they must comply, and thereby minimize the cost impacts. They may also be able to use the innovative product exemption. New Jersey accepts variances and innovative product exemptions only if they have been approved by CARB or another state which has a rule based on the OTC model rule.

Potential Consumer Impact

The potential impact of the proposed rules on retail prices of PFCs and spouts depends on the ability of manufacturers to pass on the cost increase to consumers. CARB assumed that manufacturers would pass the entire cost of compliance on to consumers. This assumption seems to be valid given the higher price of compliant PFCs sold in California since January 1, 2001. Assuming that manufacturers are able and continue to pass on the entire costs of compliance to consumers, CARB estimated that the average price of a container would increase by approximately $6.00 to $11.00 in order to comply with the proposed rules. This amounts to an annual increase of about $0.60 to $1.10 in the price of a container over an assumed 10-year life. PFCs had a 1998 retail price of $4.25 on average. The potential cost increase to the consumer is not expected to impose a noticeable adverse impact, because of the low relative price and long lifetime of PFCs.

Results Summary

The estimated cost-effectiveness of the proposed rules for PFCs of $991.00 per ton of VOC is the lowest cost-effectiveness among the sources regulated in the five OTC VOC model rules. The cost-effectiveness of the other OTC rules ranges from approximately $2,300 per ton VOC for the proposed CFCP rules and amendments to approximately $5,580 per ton of VOC for the proposed architectural coating rules and amendments. Therefore, based on the Economic Impact analysis, the Department believes the proposed rules and amendments are cost-effective. CARB estimated that the average price of a container would increase by approximately $6.00 to $11.00 in order to comply with the proposed rules. This amounts to an annual increase of about $0.60 to $1.10 in the price of a container over an assumed ten year life. The Department does not anticipate significant adverse economic impact on PFC and spout manufacturers, distributors, retailers, businesses that use PFCs, or consumers. The Department assumes manufacturers will pass on the cost of compliance to consumers. The potential cost increase to the consumer is not expected to impose a noticeable adverse impact, because of the low relative price and long lifetime of PFCs.

Cost to the Department

Additional Department resources may be needed to implement the proposed rules and amendments. Resources will be needed to organize the date-code information submitted to the Department by the manufacturers and to continue to evaluate CARB research and technology reviews. Resources will also be needed to enforce the rules.

Environmental Impact

The Department expects the proposed rules and amendments to have a significant positive environmental impact. The primary environmental benefit will be a reduction in the emission of VOCs, which are precursor emissions to the formation of ground-level ozone. As discussed earlier, ground-level ozone is breathed by people and animals and comes into contact with crops and other vegetation, as well as man-made structures and surfaces. Exposure can cause a variety of adverse effects. In addition, the proposed rules and amendments are also expected to reduce emissions of HAPs and toxic substances such as ethylene-based glycol ethers, methyl ethyl ketone, methanol, toluene, methyl bromide, xylenes, 1,3-dichloropropene, and chlorobenzene, and the constituents of gasoline, such as benzene, toluene, xylenes, ethylbenzene, hexane, and methyl tertiary butyl ether. In addition, the proposed rules and amendments are expected to reduce $PM_{2.5}$, some of which is created from VOC emissions.

Chemically Formulated Consumer Products

In the New Jersey 1996 Emission Inventory, VOC emissions from chemically formulated consumer products were estimated to be approximately 80 tons per day on a typical summer day, which represent approximately eight percent of the total man-made VOC emissions in the inventory. This estimate of the daily emissions was calculated using USEPA guidance. For additional details on the derivation of these estimates, see the NJDEP State Implementation Plan Revision for the Attainment and Maintenance of the Ozone National Ambient Air Quality Standard, 1996 Actual Emission Inventory and Rate of Progress Plans for 2002, 2005 and 2007, dated March 31, 2001.

The Department estimates that the proposed rules and amendments will achieve a 14.2 percent reduction of the entire CFCP VOC emissions inventory, beyond the current USEPA Federal rules. This is a reduction of approximately 32 percent of the emissions from the categories being regulated.

As part of the regional effort to address the one-hour ozone additional emission reduction requirements, the OTC commissioned a study to quantify the emission reduction benefits from the six rules being prepared for use on a regional basis (E.H. Pechan and Associates, Inc., "Control Measure Development Support Analysis of Ozone Transport Commission Model Rules," March 31, 2001). As shown in the regional study, the proposed CFCP rules are estimated to result in a reduction of VOC emissions in New Jersey of approximately 11 tons per day in 2005 and 12 tons per day in 2007. The Pechan report also shows the estimated impact the OTC model rules may have on VOC emissions in each of the states in the ozone transport region as well as the ozone transport region as a whole.

Additional details on how these estimates were derived are set forth in "Estimated VOC Emission Reductions and Economic Impact Analysis for Proposed Amendments to Chemically Formulated Consumer Products," prepared by the Department and "Control Measure Development Support Analysis of Ozone Transport Commission Model Rules," prepared by E.H. Pechan and Associates. The Department's report may be downloaded from the Department's website at http://www.state.nj.us/dep/aqm or obtained by telephoning (609) 633-0530.

Portable Fuel Containers

VOC emissions from PFCs were estimated to be approximately 35 tons per day on a typical summer day. It is estimated that the proposed rules will achieve a 33 percent reduction of these emissions. The rule is estimated to result in a reduction in VOC emissions in New Jersey of approximately 6.59 tons per day in 2007.

Additional details on how these estimates were derived are set forth in "Estimated VOC Emission Reductions and Economic Impact Analysis for Proposed Amendments to Chemically Formulated Consumer Products," prepared by the Department and "Control Measure Development Support Analysis of Ozone Transport Commission Model Rules," prepared by E.H. Pechan and Associates. The Department's report may be downloaded from the Department's website at http://www.state.nj.us/dep/aqm or obtained by telephoning (609) 633-0530.

The proposed rules will also improve water quality in our lakes, rivers and aquifers. Many marine pleasure craft, especially personal water craft, are refueled using PFCs. Thus the possibility of fuel spillage during "on the water" refueling is always present. The spill-proof systems will allow users of pleasure craft to refuel their engines without fuel spillage, thereby reducing the amount of fuel discharged into bodies of water. In addition, use of the spill-proof systems to refuel lawn, garden, and small construction equipment will reduce fuel spills that could percolate into aquifers.

Federal Standards Analysis

Executive Order No. 27(1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c.65) require State agencies that adopt, readopt or amend State regulations which exceed any Federal standards or requirements to include in the rulemaking document a Federal standard analysis.

The Department has performed a comparison of the proposed rules and amendments to N.J.A.C. 7:27-24, Prevention of Air Pollution from Consumer Products, to analogous Federal regulations, namely, 40 CFR §§59.100 to 59.413, National Volatile Organic Compound Emission Standards for Consumer and Commercial Products. These Federal regulations have been promulgated pursuant to the Federal Clean Air Act and set forth the substantive Federal standards. Based on its review of Federal regulations, the Department has determined that the proposed rules and amendments for CFCPs are more stringent than Federal standards. Since no Federal regulations exist for PFCs, the Department has determined that the proposed rules for PFCs do not exceed Federal standards.

Policy Discussion

The new rules and amendments are needed to fulfill a requirement, imposed by USEPA pursuant to the Federal Clean Air Act, 42 U.S.C. §§7401 et seq., that New Jersey adopt sufficient control measures to address additional VOC (ozone precursor) emission reductions identified by USEPA as being needed for New Jersey to attain the one-hour ozone standard by the mandated attainment dates of 2005 for the New Jersey portion of the Philadelphia non-attainment area and 2007 for the New Jersey portion of the New York non-attainment area. Therefore, proposal of these new rules and amendments is necessary for the State to comply with Federal requirements.

One of the options that the USEPA proposed to New Jersey and several other states was that the State work with the OTC to develop a regional strategy to reduce VOCs and NO_x in order to address the required emission reductions. OTR states were required to provide to the USEPA, by October 31, 2001, a SIP revision that identified the control measures to be adopted to address the required emission reductions. New Jersey complied with this requirement.

New Jersey worked with the OTC and other jurisdictions in the OTR to develop a set of control measures to meet the additional emission reduction requirements by the mandated attainment dates. The CFCP and PFC rules are two of the control measures identified by the OTC. The control measures were selected based on VOC inventory emissions, potential emission reductions, technological feasibility of the proposal, and timeliness of potential implementation. The OTC found no other measures that could substitute for CFCPs and PFCs and still meet the USEPA mandated emission shortfall requirement. The VOC emission reductions from these proposed rules and amendments are approximately 39 percent (half from CFCPs and half from PFCs) of the total VOC emission reductions from the five OTC VOC model rules.

Cost Benefit Analysis

The amendments for CFCPs would primarily impact manufacturers of products including any person who hires another person to manufacture a product for them. In order to comply with the rules, manufacturers may have to reformulate some of their products to meet the rules' requirements or refrain from selling them in New Jersey for use in New Jersey. Distributors and suppliers will need to ensure proper distribution of products to the appropriate states. Also potentially affected are retailers, businesses that supply ingredients and equipment to these manufacturers, businesses that use CFCPs and consumers.

As discussed in more detail in the Economic Impact above, the estimated cost per unit ranges from no cost increase (net savings or no cost for various categories) to approximately $0.60 per unit of product. The CARB economic analysis concluded that most manufacturers would be able to absorb the cost of the proposed rules and amendments with no significant adverse economic impacts. In addition, the manufacturer may or may not choose to pass some or all of these costs on to the consumer. Based on the economic analysis, the Department does not anticipate any significant adverse effects on consumers.

Companies that supply raw materials for existing non-compliant products may experience a decline in demand for their products. On the other hand, those companies which supply solvents, other chemicals and equipment for use in reformulating CFCPs could potentially benefit from the proposed rules and amendments as they experience an increase in demand for their products.

Distributors and retailers may be impacted if the potential increase in costs of products dampen demand for the products. The potential consumer impact analysis assumes that manufacturers, distributors and retailers pass on any additional compliance costs to the consumers. This may be conservative because the manufacture may absorb some or all of the cost of compliance. Based on the potential consumer impact analysis, the Department does not anticipate any significant adverse economic impacts for distributors and retailers.

Impacts to businesses that use CFCPs would be similar to the potential additional costs a consumer would experience as discussed in the consumer impact analysis. Based on the consumer impact analysis, the Department does not anticipate any significant adverse economic impacts for businesses who use CFCPs.

The Department anticipates the benefits of the proposed rules and amendments to be an increase in the quality of life and protection of human health, the environment and agriculture. The Department expects the proposed rules and amendments to have a significant and positive environmental impact. The primary environmental benefit will be a reduction in the emission of VOCs, which are precursor emissions that lead to the formation of ground-level ozone. As discussed earlier, ground-level ozone is breathed by people and animals and comes into contact with crops and other vegetation, as well as man-made structures and surfaces. This exposure can cause a variety of adverse effects. The rules are also expected to reduce emissions of hazardous air pollutants and toxic substances. In addition, the rules will reduce particulate matter of 2.5 microns or less equivalent aerodynamic diameter, some of which is created from VOC emissions. It is estimated that the proposed CFCP rules and amendments will achieve a 14.2 percent reduction of the entire consumer products VOC emissions inventory, beyond the current USEPA Federal rules, or a reduction of approximately 32 percent of the emissions from the categories being regulated. This equates to a VOC emission reduction of approximately 12 tons per day in 2007.

As discussed in the Economic Impact above, the estimated cost-effectiveness of the proposed rules and amendments for each product category ranges from no cost (and in some cases a net savings) to approximately $7.73 per pound of VOC reduced. The estimated ERWA cost-effectiveness is $1.15 per pound of VOC reduced or $2,300 per ton of VOC reduced.

In addition to the environmental and health benefits, economic benefits, which are difficult to quantify, may also be realized. Owners and employees of businesses will enjoy the environmental, health, and other social benefits of the new amendments. A reduction in air pollution will lead to healthier and more productive workers. The Department is proposing this rule to meet USEPA requirements. Failure to achieve these reductions could subject New Jersey to economic sanctions, which would adversely affect all businesses and taxpayers in the State.

Conclusion

In proposing these rules and amendments, the Department has balanced the need to protect the environment and the public health and to comply with the USEPA requirements against any economic impacts of the rule. Based on the research and surveys done by CARB, the Department has determined that these rules and amendments are achievable under current technology and are cost-effective. The Department has determined that establishing these proposed rules and amendments, even though more stringent than the Federal rule, is essential in order to meet the ozone precursor emission reduction requirements by the required attainment dates, and to protect the environment and the public health.

Jobs Impact

The Economic Impact above concluded that most manufacturers of CFCPs and PFCs would be able to absorb the cost of compliance with the proposed rules and amendments with no significant adverse economic impacts. Additionally, manufacturers may choose to pass on the cost of compliance to the consumer, either partially or wholly. Based on this conclusion, the Department does not anticipate that these proposed rules and amendments will have a significant negative impact on employment and jobs in New Jersey. In some cases, additional jobs may be created in the process of reformulating new products for sale in New Jersey.

The PFC and spout industry consists of 21 manufacturers nationwide, of which 13 are small businesses. None of these manufacturers is located in New Jersey. Accordingly, the proposed rules are not anticipated to have an adverse impact on jobs in New Jersey. Moreover, since PFCs and spouts generally account for only a small portion of the manufacturer's product portfolios, the proposed rules are not anticipated to have a significant adverse impact on out of state manufacturers of these products or jobs.

The proposed rules and amendments for CFCP and PFCs would primarily impact manufacturers of these products, since they may have to reformulate their products. However, as discussed in the Economic Impact section, the Department recognizes that other industries could also be impacted to a lesser amount, more difficult to quantify. These industries include distributors, retailers, and upstream suppliers.

Companies that supply raw materials for existing noncompliant products may experience a decline in demand for their products. On the other hand, those companies which supply solvents or other chemicals and equipment for use in reformulating products could potentially benefit from the proposed rules and amendments as they experience an increase in demand for their products. Therefore, while some individual businesses may be affected adversely, the proposed rules and amendments may provide business opportunities for existing businesses or result in the creation of new businesses, which may result in the creation of additional jobs.

As discussed in the Economic Impact above, the Department does not anticipate any significant adverse economic impacts for distributors or retailers of CFCPs or PFCs. Therefore, the Department does not anticipate these proposed rules and amendments will have a significant adverse impact on employment and jobs in New Jersey related to these businesses.

Impacts to businesses that use CFCPs or PFCs would be similar to the potential additional costs a consumer would experience, as discussed in the consumer impact analysis. Based on the consumer impact analysis, the Department does not anticipate any significant adverse economic impacts for businesses that use CFCPs or PFCs.

CARB's economic analysis concluded that most manufacturers will be able to absorb the cost of the proposed rules and amendments with no significant adverse economic impact. However, some individual businesses may be adversely affected by this regulatory action, which may affect jobs in New Jersey. The proposed rules and amendments may impose extraordinary economic hardship on some businesses with small or no margin of profit. These businesses may be able to use the variance provision of the proposed rules and amendments to extend the deadline by which they must comply, and thereby minimize the cost impacts. They may also be able to use the innovative product exemption or the alternative control plan exemption. New Jersey accepts variances, innovative product exemptions and alternative control plan exemptions only if they have been approved by CARB or another state which has a rule based on the OTC model rule.

Additional Department resources may be needed to implement the proposed rules and amendments. Resources will be needed to organize the date-code information submitted to the Department by the manufacturers and to continue to evaluate CARB research and technology reviews. Resources will also be needed to enforce the rules and amendments.

Agriculture Industry Impact

Pursuant to P.L. 1998, c.48, adopted on July 2, 1998, the Department has evaluated this rulemaking to determine the nature and extent of impact of the proposed rules and amendments on the agriculture industry. The Department expects the proposed new rules and amendments for CFCPs and PFCs to have a positive impact on the State's agriculture industry. The primary environmental benefit will be a reduction in VOCs, which are precursor emissions that lead to the formation of ground-level ozone. As discussed in Social Impact above, ground-level ozone is breathed by or comes in contact with crops and other vegetation as well as people and animals. Ground-level ozone interferes with various plants' ability to produce and store nutrients (A USEPA Fact sheet on the New 8-Hour Ozone and Fine (2.5 microns) Particulate Matter Health Standards, July 1997) causing plants to become more susceptible to disease, insects, other pollutants and harsh weather. Not only are native plants and ecosystems injured, but also agricultural crop production suffers significant losses throughout the U.S. If ground-level ozone is reduced, then agricultural crops will suffer less, and the agricultural industry will benefit.

Regulatory Flexibility Analysis

As required by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has evaluated the reporting, recordkeeping, and other compliance requirements that the proposed rules and amendments would impose upon small businesses. The Regulatory Flexibility Act defines the term "small business" as "any business which is a resident in this State, independently owned and operated and not dominant in its field, and which

employs fewer than 100 full-time employees." Based upon this definition, small businesses may be subjected to additional requirements by the proposed rules and amendments.

Chemically Formulated Consumer Products

The proposed rules and amendments for CFCPs would primarily impact manufacturers of these products. Businesses that market, distribute, supply, sell or use these products and also businesses that supply ingredients and equipment to these manufacturers or marketers may also feel some effect. The proposed compliance requirements are discussed in the Summary above.

As discussed in the Economic Impact above, according to the US Census Bureau report, 1997 Economic Census, Manufacturing, issued May 2000, there are over 200 manufacturers located in New Jersey that may be affected by the proposed rules and amendments. However, because the report's classification system is so broad, many of the manufacturers in the report may not be affected by the proposed rules and amendments. The actual number of small manufacturers which are located in New Jersey that would be affected by the proposed rules and amendments is unknown. According to a representative of the Consumer Specialty Products Association, Inc. (CSPA), three of their members in New Jersey are small businesses.

The Department does not anticipate that small businesses will need to employ professional services in order to comply with the administrative requirements of the proposed rules and amendments. The labeling, administrative and recordkeeping requirements are not significantly different than the existing rules. There may be some businesses that need to employ a consultant to assist in the reformulation of products, or obtain additional employees to assist in the reformulation of products.

As discussed in more detail in the Economic Impact above, the estimated cost per unit ranges from no cost increase (net savings or no cost for various categories) to approximately $0.60 per unit of product. The CARB economic analysis concluded that most manufacturers would be able to absorb the cost of the proposed rules and amendments with no significant adverse economic impacts. In addition, the manufacturer may or may not choose to pass some or all of these costs on to the consumer.

Companies that supply raw materials for existing non-compliant products may experience a decline in demand for their products. On the other hand, those companies which supply solvents, other chemicals and equipment for use in reformulating CFCPs could potentially benefit from the proposed rules and amendments as they experience an increase in demand for their products.

Distributors and retailers may be impacted if the potential increase in costs of products dampen demand for the products. The Potential Consumer Impact analysis assumes that manufacturers, distributors and retailers pass on any additional compliance costs to the consumers. This may be conservative because the manufacture may absorb some or all of the cost of compliance. Based on the Potential Consumer Impact above, the Department does not anticipate any significant adverse economic impacts for distributors and retailers.

Impacts to businesses that use CFCPs would be similar to the potential additional costs a consumer would experience as discussed in the Potential Consumer Impact above. Based on the Potential Consumer Impact, the Department does not anticipate any significant adverse economic impacts for businesses who use CFCPs.

The flexibility options in the proposed rules and amendments are applicable to large, as well as small businesses. The future operative date of January 1, 2005, for compliance with the proposed VOC limits gives both large and small businesses time to reformulate products to comply with the proposed rules and amendments. The effective dates in the California Consumer Products Regulation vary from January 1, 1993, to January 1, 2005. Therefore, most national manufacturers will have to reformulate to be compliant in California prior to New Jersey's operative date. Unlike California, which requires non-complying products to be sold within three years, or removed from the market, the proposed New Jersey rules and amendments do not place a deadline on how long products manufactured before January 1, 2005, which do not meet the proposed VOC limits, can continue to be sold in New Jersey, except in the case of aerosol adhesives which contain methylene chloride, perchloroethylene or trichloroethylene or that exceed the proposed VOC limits, which may not be sold after January 1, 2005.

The proposed rules and amendments allow three flexibility options: an alternative control plan, which is an averaging program; an innovative product exemption; and a variance for extraordinary economic hardship. New Jersey accepts these flexibility options if they have been approved by CARB or another state that has a rule based on the OTC model rule.

There are also technical exemptions in the proposed rules and amendments including for air fresheners, FIFRA products, antiperspirants and deodorants. To prevent burdensome reporting requirements, the proposed rules and amendments do not require reporting on a periodic basis. Reporting is only required at the request of the Department. To prevent burdensome labeling requirements, the proposed rules and amendments do not require labels to include VOC content and manufacture date of the product. Instead, a date-code, which is already generally used by industry, is acceptable.

Portable Fuel Containers

The PFC and spout industry consists of 21 manufacturers nationwide, of which 13 are small businesses. None of these manufacturers is located in New Jersey.

The Department does not anticipate that small businesses will need to employ professional services in order to comply with the administrative requirements of the proposed rules and amendments. The labeling, administrative and recordkeeping requirements are not significantly different than the existing rule. There may be some businesses that need to employ a consultant to assist in the reformulation of products, or obtain additional employees to assist in the reformulation of products. The proposed compliance requirements are discussed in the Summary above.

As discussed in more detail in the Economic Impact above, CARB estimated that the average price of a container would increase by approximately $6.00 to $11.00 in order to comply with the proposed rules. This amounts to an annual increase of about $0.60 to $1.10 in the price of a container over an assumed ten year life. The Department does not anticipate significant adverse economic impact on PFC and spout manufacturers, distributors, retailers, businesses that use PFCs or consumers. The Department assumes manufacturers will pass on the cost of compliance to consumers. The potential cost increase to the consumer is not expected to impose a noticeable adverse impact, because of the low relative price and long lifetime of PFCs.

Distributors and retailers may be impacted if the potential increase in costs of products dampen demand for the products. The potential consumer impact above assumes that manufacturers, distributors and retailers pass on any additional compliance costs to the consumers. Based on the potential consumer impact analysis, the Department does not anticipate any significant adverse economic impacts for distributors and retailers.

Impacts to businesses that use PFCs would be similar to the potential additional costs a consumer would experience as discussed in the consumer impact above. Based on the consumer impact analysis, the Department does not anticipate any significant adverse economic impacts for businesses who use PFCs.

The flexibility options for PFCs and spouts are similar to those for CFCPs. The industry must comply with the new standards by January 1, 2005, thereby allowing industry time to redesign products to comply with the proposed rules. Similar rules were effective in California on January 1, 2001. Therefore, most manufacturers have already redesigned their products to be compliant in California. PFCs that do not comply with the design standards that were manufactured prior to the January 1, 2005 operative date of the compliance standards, may be sold until January 1, 2006, if the product is properly labeled with a date or date-code.

In addition, the proposed rules for PFCs allow an innovative product exemption, and a variance for extraordinary economic hardship. New Jersey accepts these flexibility options if they have been approved by CARB or another state which has a rule based on the OTC model rule.

To prevent burdensome reporting requirements, the proposed rules do not require reporting on a periodic basis. Reporting is only required if the Department requests it. To prevent burdensome labeling requirements, the proposed rules do not require labels to include the manufacture date of the product, instead, a date-code, which is already generally used by industry is acceptable.

Analysis Summary

The proposed rules and amendments may affect small businesses, depending on the products they manufacture. In proposing these rules and amendments, the Department has balanced the need to protect the environment and the public health and to comply with the USEPA against any economic impacts of the rule upon businesses. No further exemption from coverage can be provided to small businesses if the full effect of these amendments is to be achieved. Owners and employees of small businesses will enjoy the environmental, health, and other social benefits of the new rules and amendments. Furthermore, securing the VOC emission reductions that would be realized through the new amendments is required by the USEPA

pursuant to the Federal Clean Air Act. Failure to achieve these reductions could subject New Jersey to economic sanctions, which would adversely affect all businesses in the State including small businesses. The Department has determined that to exempt small businesses from any requirements or to reduce any requirements would compromise the goals of the rules and the emission reductions needed to reach attainment of the ozone standards.

Smart Growth Impact

Executive Order No. 4(2002) requires State agencies that adopt, amend or repeal State regulations to include in the rulemaking document a Smart Growth Impact statement that describes the impact of the proposed rules and amendments on the achievement of smart growth and implementation of the State Development and Redevelopment Plan (State Plan). The proposed new rules and amendments for CFCPs and PFCs are to be implemented evenly Statewide and, therefore, do not relate to the State's official land use and development policies in a way that would either encourage or discourage any development or redevelopment in this State contrary to the guiding principles of the State Plan. As a result, the Department does not expect this rulemaking to have an impact on the State's achievement of smart growth.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

CHAPTER 27
AIR POLLUTION CONTROL

SUBCHAPTER 24. [CONTROL AND PROHIBITION OF VOLATILE ORGANIC COMPOUNDS] PREVENTION OF AIR POLLUTION FROM CONSUMER [AND COMMERCIAL] PRODUCTS

7:27-24.1 Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

"Adhesive" means a product that is used to bond one surface to another by attachment. This term does not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners, or any other product with an adhesive incorporated onto or in an inert substrate.

"Adhesive remover" means a product designed exclusively for the removal of adhesives, caulk and other bonding materials from either a specific substrate or a variety of substrates.

"Aerosol adhesive" means an adhesive that is an aerosol product in which the spray mechanism is permanently housed in a nonrefillable can designed for hand-held application without the need for ancillary hoses or spray equipment.

"Aerosol product" means a [consumer] product that incorporates a pressurized spray system that dispenses product ingredients by means of a propellant or mechanically induced force. This term does not include pump sprays.

"Agricultural use" means the use of any pesticide or method or device for the control of pests in connection with the commercial production, storage or processing of any animal or plant crop[s]. This term does not include the use of pesticides [which are intended] for [and are labeled in packages or containers for] any of the following uses, **provided that the label on the packaging in which the pesticide is sold clearly indicates that the product is intended for one or more of the following uses, rather than for agricultural use:**

1. Home use, that is, use in a household or the household's immediate environment;

2. [Structural] Use in structural pest control;

3. Industrial use, that is, use for or in a manufacturing, mining, or chemical process, or [in] use in the operation of [factories] a factory, processing plant[s, and] or similar site[s]; or

4. Institutional use, that is, use within the confines of, or on property [necessary for the operation] of, or in the buildings used in the operation of, an institution, such as [hospitals, schools, libraries, auditoriums, and office complexes] a hospital, school, library, auditorium, or office complex.

"Air freshener" means a [consumer] product including, but not limited to, sprays, wicks, powders and crystals, designed for the purpose of masking odors, or freshening, cleaning, scenting, or deodorizing the air. This term does not include products that are used on the human body, products that function primarily as cleaning products, disinfectant products claiming to deodorize by killing germs on surfaces, or institutional/industrial disinfectants when offered for sale solely through institutional and industrial channels of distribution. **This term does include spray disinfectants and other products that are expressly represented for use as air fresheners, except institutional and industrial disinfectants when offered for sale through institutional and industrial channels of distribution. [In determining] To determine** whether a product is an air freshener, all verbal and visual representations regarding product use on the label [and] or packaging[, and] or in the product's literature and advertising may be considered. The presence of [and] or representation about a product's fragrance and ability to deodorize resulting from surface application shall not constitute a claim of air freshening.

"All other forms" means all [consumer] product forms for which no form-specific VOC standard is specified. Unless specified otherwise by the applicable VOC standard, this term includes, but is not limited to, solids, liquids, wicks, powders, crystals, and cloth or paper wipes (towelettes).

"Alternative control plan" or "ACP" means an emissions averaging program for chemically formulated consumer products, which provides a manufacturer with an alternative method to comply with the VOC content limits in Table 1 at N.J.A.C. 7:27-24.4(a), and which was issued in accordance with N.J.A.C. 7:27-24.4(i) and (j) by:

1. CARB pursuant to its consumer products regulations (including all amendments and supplements) at Title 17, Subchapter 8.5, Article 1, Section 94503.5 or Article 2, Section 94511 of the California Code of Regulations; or

2. The air pollution control agency of another state pursuant to its consumer product regulations if those consumer product regulations are based on the Ozone Transport Commission (OTC) "Model Rule for Consumer Products" dated November 29, 2001, including subsequent revisions.

"Antimicrobial hand or body cleaner or soap" means a cleaner or soap that is designed to reduce the level of microorganisms on the skin through germicidal activity. This term includes, but is not limited to, antimicrobial hand or body washes/cleaners, food handler hand washes, healthcare personnel hand washes, pre-operative skin preparations, and surgical scrubs. This term does not include prescription drug products, antiperspirants, astringent/toners, deodorants, facial cleaner or soap, general-use hand or body cleaner or soap, hand dishwashing detergent (including antimicrobial), heavy-duty hand cleaner or soap, medicated astringent/medicated toner, and rubbing alcohol.

"Antiperspirant" means a [consumer] product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, gels, and squeeze bottles, which is marketed for the purpose of reducing perspiration in the human axilla by at least 20 percent in at least 50 percent of a target population.

"Architectural coating" means architectural coating as that term is defined at N.J.A.C. 7:27-23.2.

"ASTM" means the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"Astringent/toner" means a product not regulated as a drug by the FDA, and that is applied to the skin for the purpose of cleaning or tightening pores. This term also includes clarifiers and substrate impregnated products. This term does not include any hand, face, or body cleaner or soap product, medicated astringent/medicated toner, cold cream, lotion, or antiperspirant.

"Automotive brake cleaner" means a product designed to clean motor vehicle brake mechanisms by removing oil, grease, brake fluid, brake pad material or dirt from them.

"Automotive engine compartment adhesive" means an aerosol adhesive designed for use in motor vehicle under-the-hood applications that require oil and plasticizer resistance, as well as high shear strength, at temperatures of 200 to 275 degrees Fahrenheit (°F).

"Automotive hard paste wax" means an automotive wax or polish that:

1. Is designed to protect and improve the appearance of automotive paint surfaces;

2. Is a solid at room temperature; and

3. Contains zero percent water by formulation.

"Automobile headliner adhesive" means an aerosol adhesive designed to bond together layers in motor vehicle headliners.

"Automotive instant detailer" means a product designed for use in a pump spray that is designed to be applied to the painted surface of automobiles and wiped off prior to the product being allowed to dry.

"Automotive rubbing or polishing compound" means a product designed primarily to remove oxidation, old paint, scratches, swirl marks, or other defects from the painted surfaces of motor vehicles without leaving a protective barrier.

"Automotive wax, polish, sealant or glaze" means a product designed to seal out moisture, increase gloss, or otherwise enhance a motor vehicle's painted surfaces. This term includes, but is not limited to, products designed for use in autobody repair shops and drive-through car washes, as well as products designed for the general public. This term does not include automotive rubbing or polishing compounds, automotive wash and wax products, surfactant-containing car wash products, or products designed for use on unpainted surfaces such as bare metal, chrome, glass, or plastic.

"Automotive windshield washer fluid" means a product that is a liquid designed for use in a motor vehicle windshield washer system as an antifreeze or for the purpose of cleaning, washing, or wetting the windshield. This term does not include fluids placed by the manufacturer in a new vehicle.

...

"Bathroom and tile cleaner" means a [consumer] product designed to clean tile or surfaces in bathrooms. This term does not include products specifically designed to clean toilet bowls or toilet tanks.

"Bug and tar remover" means a product designed to remove either or both of the following from painted motor vehicle surfaces without causing damage to the finish:

1. Biological-type residues such as insect carcasses and tree sap; and

2. Road grime, such as road tar, roadway paint markings, and asphalt.

...

"[Carburetor-choke] Carburetor or fuel-injection air intake cleaner" means a [consumer] product designed to remove fuel deposits, dirt [and], or other contaminants from a carburetor, choke, throttle body of a fuel-injection system, or associated linkages. This term does not include products designed exclusively to be introduced directly into the fuel lines or fuel storage tank prior to introduction into the carburetor or fuel injectors.

"Carpet and upholstery cleaner" means a product designed for the purpose of cleaning rugs, carpeting, and the interior of motor vehicles and/or on household furniture or objects upholstered or covered with fabrics such as wool, cotton, nylon, or other synthetic fabrics by eliminating dirt and stains on them. This term includes, but is not limited to, products that make fabric protectant claims. This term does not include general purpose cleaners, spot removers, vinyl or leather cleaners, dry cleaning fluids, or products designed exclusively for use at industrial facilities engaged in furniture or carpet manufacturing.

"Charcoal lighter material" means a combustible material designed to be applied on, incorporated in, added to, or used with charcoal to enhance ignition. This term does not include:

1. Electrical starters and probes;

2. Metallic cylinders using paper tinder;

3. Natural gas;

4. Propane; or

5. Fat wood.

"Chemically formulated consumer product category" means a category listed in Table 1 at N.J.A.C. 7:27-24.4(a) that best describes a chemically formulated consumer product.

"Colorant" means a pigment or coloring material used in a product for an aesthetic effect, or to dramatize an ingredient.

"Construction [and], panel, and floor covering adhesive" means a one-component [household] adhesive [which has gap filling capabilities and which distributes stress uniformly throughout the bonded area resulting in a reduction or elimination of the need for use of mechanical fasteners.] that:

1. Is designed exclusively for the installation, remodeling, maintenance, or repair of:

i. Structural and building components that include, but are not limited to, beams, trusses, studs, paneling (including, but not limited to, drywall or drywall laminates, fiberglass reinforced plastic (FRP), plywood, particle board, insulation board, pre-decorated hardboard or tileboard), ceiling and acoustical tile, molding, fixtures, countertops or countertop laminates, cove or wall bases, or flooring or subflooring; or

ii. Floor or wall coverings that include, but are not limited to, wood or simulated wood covering, carpet, carpet pad or cushion, vinyl-backed carpet, flexible flooring material, nonresilient flooring material, mirror tiles or other types of tiles, or artificial grass; and

2. Is not a floor seam sealer.

"Consumer" means a person who [seeks,] purchases[,] or otherwise acquires any consumer product for personal, family, household, or institutional use. This term does not include a person acquiring a [consumer] product for resale.

"Consumer product" means [chemically formulated] a household or institutional product [sold at retail or wholesale and used by household, commercial or institutional consumers. This term does not include paint, or architectural coatings.], including any packaging, that includes, but is not limited to:

1. Chemically formulated products including, but not limited to, products that are detergents; cleaning compounds; floor polishes and waxes; cosmetics; personal care products; home, lawn, and garden products; disinfectants; sanitizers; and automotive specialty products; and

2. A portable fuel container or spout or both a portable fuel container and spout.

"Contact adhesive" means [a household] an adhesive that [meets all of the following four criteria]:

1. Is [nitrile based, or contains polychlorobutadiene (neoprene, chloroprene, bayprene), or latex] designed for application to both surfaces to be bonded together;

2. Is designed to be allowed to dry before the two surfaces are placed in contact with each other;

[2.]3. Forms an [instantaneous, non-repositionable] immediate bond [when applied to two substrates] that is impossible or difficult to reposition after both adhesive-coated surfaces are placed in contact with each other;

[3. Exhibits a minimum 30 minute bonding range when dry to the touch; and

4. Bonds only to itself without the need for reactivation by solvents or heat.]

4. Does not need sustained pressure or clamping of surfaces after the adhesive-coated surfaces have been brought together using sufficient momentary pressure to establish full contact between both surfaces; and

5. Is not a rubber cement that is primarily intended for use on paper substrates.

["Container" means the part or parts of the consumer product which serve only to contain, enclose, incorporate, deliver, dispense, wrap or store the chemically formulated substance or mixture of substances which is solely responsible for accomplishing the purposes for which the product was designed or intended. This term includes any article onto or into which the principal display panel is incorporated, etched, printed or attached.]

"Cooking spray" means a product that is an aerosol [product] and is designed either to reduce sticking on cooking and baking surfaces, or to be applied on food, or both.

"Crawling bug insecticide" means [any] an insecticide product that is designed for use against ants, cockroaches, or other household crawling

[household] arthropods, including, but not limited to, mites, silverfish, or spiders. This term does not include products designed to be used exclusively on humans or animals, or any house dust mite product.

"Date-code" means a code indicating the day, month and year on which a product was manufactured, filled, or packaged.

"Deodorant" means a [consumer] product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams and squeeze bottles, that is intended by the manufacturer to be used to minimize odor in the human axilla by retarding the growth of bacteria which cause the decomposition of perspiration.

...

"Device" means an instrument [which is] or contrivance, other than a firearm, designed for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life[,] (other than humans and other than bacteria, virus or other microorganism on or in living humans or other living animals). This term does not include equipment used for the application of pesticides if the equipment is sold separately from the pesticide. [Additionally, the term does not include any instrument which is a firearm.]

"Disinfectant" means a product intended to destroy or irreversibly inactivate infectious or other undesirable bacteria, pathogenic fungi, or viruses on surfaces or inanimate objects and whose label is registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. §§136 et seq.). This term does not include:

1. Products designed solely for use on humans or animals;

2. Products designed for agricultural use;

3. Products designed solely for use in swimming pools, therapeutic tubs, or hot tubs; or

4. Products that, as indicated on the principal display panel or label, are designed primarily for use as bathroom and tile cleaners, glass cleaners, general purpose cleaners, toilet bowl cleaners, or metal polishes.

"Distributor" means a person to whom a product is sold or supplied for the purpose of resale or distribution in commerce, except that manufacturers, retailers, and consumers are not distributors.

...

"Dry cleaning fluid" means a non-aqueous liquid product designed and labeled exclusively for use on fabrics which are labeled "dry clean only," such as clothing or drapery, or on "S-coded" fabrics (that is, upholstery fabrics designed to be cleaned only with water-free spot cleaning products as specified by the Joint Industry Fabric Standards Committee). This term includes, but is not limited to, those products used by commercial dry cleaners and commercial businesses that clean fabrics such as draperies at the customer's residence or work place. This term does not include "spot remover" or "carpet and upholstery cleaner."

"Dusting aid" means a [consumer] product designed to assist in removing dust and other soils from floors and other surfaces without leaving a wax or silicone-based coating. This term does not include products which consist entirely of compressed gases for use in electronic or other specialty areas.

"Electronic cleaner" means a product designed specifically for the removal of dirt, grease or grime from electrical equipment such as electric motors, circuit boards, electricity panels, and generators.

"Engine degreaser" means a [consumer] product designed to [remove] clean engines and other mechanical parts by removing grease, grime, oil and other contaminants from [the] their external surfaces [of engines and other mechanical parts].

...

"Establishment" means, when used with respect to an institutional product, any facility (other than living quarters or a residence) including, but not limited to, an office, government agency, factory, school, hospital, sanitarium, prison, retail outlet, restaurant, hotel, store, automobile service and parts center, health club, theater, or transportation facility.

"Fabric protectant" means a [consumer] product designed to be applied to fabric substrates to protect the surface from soiling from dirt and other impurities or to reduce absorption of [water] liquid into the fabric's fibers. This term does not include [silicone-based products whose function is to provide water repellency] waterproofers, products designed for use solely on leather, or products sold in packages of 10 fluid ounces or less and designed for use solely on fabrics [which are] labeled [for] "dry clean only." [and sold in containers of 10 fluid ounces or less.]

"Facial cleaner or soap" means a cleaner or soap designed primarily to clean the face. This term includes, but is not limited to, facial cleansing creams, gels, liquids, lotions, and substrate-impregnated forms. This term does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent/toner, general-use hand or body cleaner or soap, medicated astringent/medicated toner, or rubbing alcohol.

"Fat wood" means pieces of wood kindling with high naturally-occurring levels of sap or resin that enhance ignition of the kindling. This term does not include any kindling with substances added to enhance flammability, such as wax-covered or wax-impregnated wood-based products.

"FDA" means the United States Food and Drug Administration.

...

"Flexible vinyl" means a nonrigid polyvinyl chloride plastic with at least five percent plasticizer content, by weight.

"Flexible vinyl adhesive" means an aerosol adhesive designed to bond flexible vinyl to substrates.

"Floor polish or wax" means a wax, polish or any other [consumer] product designed to polish, protect, or enhance floor surfaces by leaving a protective coating that is designed to be periodically replenished. This term does not include spray buff products, products designed solely for the purpose of cleaning floors, floor finish strippers, products designed for unfinished wood floors, and coatings subject to architectural coating rules at 40 CFR Parts 9 and 59 or N.J.A.C. 7:27-23.

"Floor seam sealer" means a product designed and labeled exclusively for bonding, fusing, or sealing (coating) seams between adjoining rolls of installed flexible sheet flooring.

"Floor wax stripper" means a product designed to remove natural or synthetic floor polishes or waxes through breakdown of the polish or wax polymers, or by dissolving or emulsifying the polish or wax. This term does not include aerosol floor wax strippers or products designed to remove floor wax solely through abrasion.

"Flying bug insecticide" means an insecticide that is designed for use against flying insects or other flying arthropods, including, but not limited to, flies, mosquitoes, moths or gnats. This term does not include wasp and hornet insecticides [or], products that are designed to be used exclusively on humans or animals, or any moth-proofing product. For the purposes of this definition only, "moth-proofing product" means a product whose label, packaging, or accompanying literature indicates that the product is designed to protect fabrics from damage by moths, but does not indicate that the product is suitable for use against flying insects or other flying arthropods.

...

"Fragrance" means a substance or complex mixture of aroma chemicals, natural essential oils, or other functional components [with a combined vapor pressure not in excess of two millimeters of mercury at 20 degrees Celsius (°C)], the sole purpose of which is to impart an odor or scent, or to counteract a malodor.

"Fuel" means solid, liquid, or gaseous material used to produce useful heat by burning.

"Furniture maintenance product" means a wax, polish, conditioner, or any other [consumer] product designed for the purpose of polishing, protecting or enhancing finished wood surfaces other than floors. This term does not include dusting aids, products designed solely for the purpose of cleaning, and products designed to leave a permanent finish such as stains, sanding sealers and lacquers.

"Gel" means a colloid in which the disperse [and] phase has combined with the continuous [phases combine to form] phase to produce a semisolid material, such as jelly.

"General purpose adhesive" means a non-aerosol [household] adhesive designed for use on a variety of substrates. This term does not include contact adhesives[, structural waterproof adhesives, or]; construction [and], panel, and floor covering adhesives; adhesives designed

exclusively for application on one specific category of substrates (that is, substrates that are composed of similar materials, such as different types of metals, paper products, ceramics, plastics, rubbers, or vinyls); or adhesives designed exclusively for use on one specific category of articles (that is, articles that may be composed of different materials, but perform a specific function, such as gaskets, automotive trim, weather-stripping, or carpets).

"General purpose cleaner" means a [consumer] product designed for general all-purpose cleaning, in contrast to cleaning products designed to clean specific substrates in certain situations. This term includes products designed for general floor cleaning, kitchen or countertop cleaning, and cleaners designed to be used on a variety of hard surfaces, but does not include general purpose degreasers and electronic cleaners.

"General purpose degreaser" means a product designed to remove or dissolve grease, grime, oil and other oil-based contaminants from a variety of substrates, including automotive or miscellaneous metallic parts. This term does not include:

1. Engine degreasers, general purpose cleaners, adhesive removers, electronic cleaners, or metal polish/cleansers;

2. Products used exclusively in solvent cleaning tanks or related equipment (that is, in tanks or equipment including, but not limited to, cold cleaners, vapor degreasers, conveyorized degreasers, film cleaning machines, or products designed to clean miscellaneous metallic parts by immersion in a container); or

3. Products that are sold exclusively to establishments that manufacture or construct goods or commodities labeled "not for retail sale."

"General-use hand or body cleaner or soap" means a cleaner or soap designed to be used routinely on the skin to clean or remove typical or common dirt and soils. This term includes, but is not limited to, hand or body washes, dual-purpose shampoo-body cleaners, shower or bath gels, and moisturizing cleaners or soaps. This term does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent/toner, facial cleaner or soap, hand dishwashing detergent (including antimicrobial), heavy-duty hand cleaner or soap, medicated astringent/medicated toner, or rubbing alcohol.

"Glass cleaner" means a [consumer] product designed primarily [for the purpose of cleaning] to clean surfaces made of glass. This term does not include products designed solely [for the purpose of cleaning] to clean optical materials used in eyeglasses, photographic equipment, scientific equipment and photocopying machines.

"Hair mousse" means a [consumer] product that is a hairstyling foam designed to facilitate styling of a coiffure and provide limited holding power.

"Hair shine" means a product designed for the primary purpose of creating a shine when applied to the hair. This term includes, but is not limited to, dual-use products designed primarily to impart a sheen to the hair. This term does not include hair spray, hair mousse, hair styling gel, or spray gel, or products whose primary purpose is to condition or hold the hair.

"Hair spray" means a [consumer] product designed primarily for the purpose of dispensing droplets of a resin on and into hair coiffure which will impart sufficient rigidity to the coiffure to establish or retain the style for a period of time.

"Hair styling gel" means a high viscosity, often gelatinous, [consumer] product that contains a resin and is designed for the application to hair to aid in styling and sculpting of the hair coiffure.

"Heavy-duty hand cleaner or soap" means a product designed to clean or remove difficult dirt and soils such as oil, grease, grime, tar, shellac, putty, printer's ink, paint, graphite, cement, carbon, asphalt, or adhesives from the hand with or without the use of water. This term does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent/toner, facial cleaner or soap, general-use hand or body cleaner or soap, medicated astringent/medicated toner or rubbing alcohol.

"Herbicide" means a pesticide designed to kill or retard a plant's growth, but excludes:

1. Products that are for agricultural use; or

2. Restricted materials that require a permit for use and possession.

"High volatility organic compound [(HVOC)]" or "HVOC" means any volatile organic compound that exerts a vapor pressure greater than 80 millimeters of mercury (mm Hg) when measured at 20 degrees Celsius (°C).

"Hospital or medical disinfectant" means an antimicrobial product registered with the EPA that qualifies to bear the name or claim "hospital or medical environment disinfectant" pursuant to EPA guidelines published pursuant to 7 U.S.C. §136a(c)(2)(a), including, but not limited to, antimicrobial pesticides used in hospitals, doctor and dentist offices, or other medical environments.

"House dust mite" means mites which feed primarily on skin cells shed in the home by humans and pets and which belong to the phylum Arthropoda, the subphylum Chelicerata, the class Arachnida, the subclass Acari, the order Astigmata, and the family Pyroglyphidae.

"House dust mite product" means a product whose label, packaging, or accompanying literature states that the product is suitable for use against house dust mites, but does not indicate that the product is suitable for use against ants, cockroaches, or other household crawling arthropods.

["Household adhesive" means any household product that is used to bond one surface to another by attachment. This term does not include products used on humans or animals, adhesive tape, contact paper, wallpaper, shelf liners, or any other product with an adhesive incorporated onto or in an inert substrate.]

"Household product" means a [consumer] product that is [primarily] designed to be used primarily inside or outside of living quarters or residences, including their immediate surroundings, that are occupied or intended for occupation by individuals[, including the immediate surroundings] and/or households. This term does not include a product that is designed to be used primarily in the maintenance or operation of an establishment.

"HVOC" (see "high volatility organic compound").

"Innovative product exemption" or "IPE" means a determination [from the California Air Resources Board] that a particular consumer product will result in less VOC emissions as compared to a representative compliant consumer product or as compared to the reformulation of the particular product in order to comply with a VOC content limit due to some characteristic of the product formulation, design, delivery system, or other factor. Such determination must be in accordance with N.J.A.C. 7:27-24.4(i) and (j) for a chemically formulated consumer product, and in accordance with N.J.A.C. 7:27-24.8(e) and (f) for a portable fuel container, spout, or portable fuel container and spout, and be issued by:

1. CARB pursuant to the [CARB's] consumer products regulations (including all amendments and supplements) at Title 17, Subchapter 8.5, Article 1, Section 94503.5 or Article 2, Section 94511 of the California Code of Regulations[.]; or

2. The air pollution control agency of another state pursuant to its consumer product regulations, if those consumer product regulations are based on the Ozone Transport Commission (OTC) "Model Rule for Consumer Products" dated November 29, 2001, including subsequent revisions.

"Insecticide" means a pesticide [that is] designed for use against insects or other arthropods. This term does not include [any product that is]:

1. [Designed] Products that are for agricultural use;

2. [Designed] Products that are for use in structural pest control which require a commercial pesticide applicator licensed under N.J.A.C. 7:30-6; [or]

3. [A restricted material that requires] Restricted materials that require a permit for use and possession[. Additionally, for the purpose of this subchapter, this term does not include solid]; or

4. Solid fertilizers that also have insecticidal properties.

"Insecticide fogger" means an insecticide designed to release all or most of its content as a fog or mist into indoor areas during a single application.

"Institutional product" means a product that is designed to be used primarily in the maintenance or operation of an establishment that manufactures, transports, or sells goods or commodities, or provides services for profit, or is engaged in the nonprofit promotion of a particular public, educational, or charitable cause. This term does not include a product that is designed to be used primarily inside or outside of living quarters or residences that are occupied or intended for occupation by individuals (that is, is a household product). It also does not include any product that is used as a raw material or other input into, or used exclusively in the manufacture or construction of the goods or commodities at the establishment.

"Institutional use" means, with respect to a product, use within the lines of, or on property of, an establishment, in the maintenance or operation of the establishment.

. . .

"Laminate repair/edgebanding adhesive" means an aerosol adhesive designed for:

1. The touch-up or repair of items laminated with high pressure laminates (for example, lifted edges, delaminates); or

2. The touch-up, repair, or attachment of edgebanding materials, including, but not limited to, other laminates, synthetic marble, veneers, wood molding, and decorative metals.

For the purposes of this definition, "high pressure laminates" are sheet materials which consist of paper, fabric, or other core material that has been laminated at temperatures exceeding 265 degrees Fahrenheit (°F), and at pressures between 1,000 and 1,400 pounds per square inch (psi).

"Laundry prewash" means a [consumer] product that is designed for application to a fabric prior to laundering and that supplements and contributes to the effectiveness of laundry detergents or provides specialized performance.

"Laundry starch product" means a [consumer] product that is designed for application to a fabric, either during or after laundering, to impart and prolong a crisp, fresh look and [that] may also act to help ease ironing of the fabric. This term includes, but is not limited to, fabric finish, sizing, and starch.

. . .

"Liquid" means a substance or mixture of substances which is capable of a visually detectable flow as determined [pursuant to] under ASTM D-4359-90. This term does not include powders or other materials that are composed entirely of solid particles.

"Low vapor pressure VOC" or "LVP-VOC" means a VOC that is a chemical compound (that is, a molecule of definite chemical formula and isomeric structure) or mixture (that is, a substrate comprised of two or more chemical compounds) that contains at least one carbon atom and meets one of the following conditions:

1. It has a vapor pressure less than 0.1 millimeters of mercury (mm Hg) at 20 degrees centigrade (°C), as determined by CARB Method 310;

2. Its vapor pressure is unknown and it is:

i. A chemical compound with more than 12 carbon atoms; or

ii. A chemical mixture comprised solely of compounds with more than 12 carbon atoms;

3. It is a chemical compound with a boiling point greater than 216 degrees centigrade (°C), as determined by CARB Method 310; or

4. It is the weight percent of a chemical mixture that boils above 216 degrees centigrade (°C), as determined by CARB Method 310.

"Lubricant" means a product designed to reduce friction, heat, noise, or wear between moving parts, or to loosen rusted or immovable parts or mechanisms. This term does not include:

1. Automotive power steering fluids;

2. Products for use inside power generating motors, engines, or turbines, or their associated power-transfer gearboxes;

3. Two cycle oils or other products designed to be added to fuels;

4. Products for use on the human body or animals; or

5. Products that are sold exclusively to establishments which manufacture or construct goods or commodities and are labeled "not for retail sale."

"Manufacturer" means [any] a person who [imports,] manufactures, imports, assembles, processes, produces, packages, repackages, or relabels a [consumer] product. [If the container or package of the consumer product lists two companies, firms or establishments, the manufacturer is the party which the product is "manufacturer for" or "distributed by," as noted on the container or package of the consumer product.] **Manufacturer also includes any person for whom the product is manufactured, or by whom the product is distributed, if that person is identified as such on the product label. Manufacturer also includes any person that hires another person to manufacture a product for compensation.**

["Maximum allowable VOC content (percent by weight)" means the total weight of VOC, except those VOCs exempted at N.J.A.C. 7:27-24.2(f) below, allowed to be in the consumer product. This term is expressed as a percentage of the total net weight of the product exclusive of the container or package and is calculated according to the following equation:

$$\text{Percent by weight} = \frac{B-C}{A} \times 100$$

where:

A = net weight of unit (excluding container or package)
B = weight of VOCs per unit
C = weight of VOCs exempted under N.J.A.C. 7:27-24.2(f) per unit]

"Medicated astringent/medicated toner" means a product regulated as a drug by the FDA and that is applied to the skin for the purpose of cleaning or tightening pores. This term includes, but is not limited to, clarifiers and substrate-impregnated products. This term does not include hand, face, or body cleaner or soap products, astringent/toner, cold cream, lotion, antiperspirants, or products that must be purchased with a doctor's prescription.

"Medium volatility organic compound" or "MVOC" means a volatile organic compound that exerts a vapor pressure greater than two millimeters of mercury (mm Hg) and less than or equal to 80 millimeters of mercury (mm Hg) when measured at 20 degrees Centigrade (°C).

"Metal polish/cleanser" means a product designed primarily to improve the appearance (that is, to remove or reduce stains, impurities, or oxidation from surfaces or to make surfaces smooth and shiny) of finished metal, metallic, or metallized surfaces by physical or chemical action. This term includes, but is not limited to, metal polishes used on brass, silver, chrome, copper, stainless steel and other ornamental metals. This term does not include automotive wax, polish, sealant or glaze, wheel cleaner, paint remover or stripper, products designed and labeled exclusively for automotive and marine detailing, or products designed for use in degreasing tanks.

"Mist spray adhesive" means an aerosol that is not a special purpose spray adhesive and that delivers a particle or mist spray, resulting in the formation of fine, discrete particles that yield a generally uniform and smooth application of adhesive to the substrate.

"Mounting adhesive" means an aerosol adhesive designed to permanently mount photographs, artwork, and any other drawn or printed media to a backing (paper, board, cloth, etc.) without causing discoloration to the artwork.

"Multi-purpose dry lubricant" means a lubricant that is:

1. Designed and labeled to provide lubricity by depositing a thin film of graphite, molybdenum disulfide ("moly"), or polytetrafluoroethylene or closely related fluoropolymer ("teflon") on surfaces; and

2. Designed for general purpose lubrication, or for use in a wide variety of applications.

"Multi-purpose lubricant" means a product that is a lubricant designed for general purpose lubrication, or for use in a wide variety of applications. This term does not include multi-purpose dry lubricants, penetrants, or silicone-based multi-purpose lubricants.

"Multi-purpose solvent" means an organic liquid designed to be used for a variety of purposes, including cleaning or degreasing of a variety of substrates, or thinning, dispersing or dissolving other

organic materials. This term includes solvents used in institutional facilities, except for laboratory reagents used in analytical, educational, research, scientific or other laboratories. This term does not include solvents used in cold cleaners, vapor degreasers, conveyorized degreasers or film cleaning machines, or solvents that are incorporated into, or used exclusively in the manufacture or construction of, the goods or commodities at the site of the establishment.

...

"Nail polish remover" means a [consumer] product designed to remove nail polish and coatings from fingernails or toenails.

"Nominal capacity" means, with respect to a portable fuel container, the volume that the manufacturer indicates is the maximum recommended filling level.

"Non-aerosol product" means a product that is not dispensed by a pressurized spray system.

"Non-carbon containing compound" means a compound that does not contain any carbon atoms.

"Nonresilient flooring" means flooring of a mineral [material(s)] content which is not flexible. This term includes terrazzo, marble, slate, granite, brick, stone, ceramic tile and concrete.

"Non-selective terrestrial herbicide" means a product that is a terrestrial herbicide, toxic to plants without regard to species.

"Outboard engine" means a spark-ignition marine engine that, when properly mounted on a marine watercraft in the position to operate, houses the engine and drive unit external to the hull of the marine watercraft.

"Oven cleaner" means [any consumer] a product designed to clean ovens and to remove dried food deposits from oven walls.

"[Packaging] **Package" or "packaging"** means the part or parts of [the consumer] a product which serve only to contain, enclose, incorporate, deliver, dispense, wrap or store the **functional item or material (such as a chemically formulated substance or mixture of substances) which is solely responsible for accomplishing the purposes** for which the product was designed or intended. This term includes any article onto or into which the principal display panel is incorporated, etched, printed, or attached.

"Paint" means a pigmented liquid, liquefiable, or mastic composition designed for application to a substrate in a thin layer that is converted to an opaque solid film after application, and is used for protection, decoration or identification, or to serve some functional purpose, such as the filling or concealing of surface irregularities or the modification of light and heat radiation characteristics.

"Paint remover or stripper" means a product designed to strip or remove paints or other related coatings, by chemical action, from a substrate without markedly affecting the substrate. This term does not include multi-purpose solvents, paint brush cleaners, products designed and labeled exclusively to remove graffiti, and hand cleaner products that claim to remove paints and other related coatings from skin.

"Penetrant" means a product that is a lubricant designed and labeled primarily to loosen metal parts that have bonded together due to rusting, oxidation, or other causes. This term does not include multi-purpose lubricants that claim to have penetrating qualities, but are not labeled primarily to loosen bonded parts.

"Permeation" means, with respect to a portable fuel container, the process by which individual fuel molecules may penetrate the walls and various assembly components of the portable fuel container directly to the outside ambient air.

...

"Pesticide" means a [consumer product which includes any] substance or mixture of substances labeled, designed, or intended for use in preventing, destroying, repelling or mitigating any pest, or any substance or mixture of substances labeled, designed or intended for use as a defoliant, desiccant, or plant regulator. This term does not include any substance, mixture of substances, or device which the EPA does not consider to be a pesticide in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. §§136 et seq.).

"Polyolefin adhesive" means an aerosol adhesive designed to bond polyolefins to substrates.

"Polystyrene foam adhesive" means an aerosol adhesive designed to bond polystyrene foam to substrates.

"Portable fuel container" means a product that is a reusable container or vessel, with a nominal capacity of ten gallons or less, designed or used primarily for receiving, transporting, storing or dispensing fuel or a fuel blend.

"Portable fuel container product category" means the category that best describes a spout and/or a portable fuel container with respect to its nominal capacity, material construction, fuel flow rate, and permeation rate, as applicable, as determined by the Department.

"Plasticizer" means a material, such as a high boiling point organic solvent, that is incorporated into a plastic to increase its flexibility, workability, or distensibility, and may be determined using ASTM Method E260-91 or from product formulation data.

"Principal display panel or panels" means that part, or those parts, of a label that are so designed as to most likely be displayed, presented, shown, or examined under normal and customary conditions of display or purchase. If a product and its packaging have more than one principal display panel, all requirements pertaining to the "principal display panel" shall pertain to each such "principal display panel."

"Product brand name" means the name of the product exactly as it appears on the principal display panel of the product.

["Product category" means the category which best applies to a given consumer product as defined in this section and listed at N.J.A.C. 7:27-24.3 Table 1.]

...

"Product line" means a group of products of identical form and function belonging to the same chemically formulated consumer product category(ies).

...

"Representative code" means a code that identifies a portable fuel container or portable fuel container and spout as subject to and complying with N.J.A.C. 7:27-24.8.

"Restricted materials" means pesticides [established] classified as restricted use pesticides under N.J.A.C. 7:30-2.10 or classified for restricted use [under] by EPA pursuant to section 3(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. §§[136-136y] 136 et seq.).

"Retail outlet" means any establishment at which products are sold, supplied, or offered for sale directly to consumers.

"Retailer" means any person who owns, leases, operates, manages, controls, or supervises a retail outlet.

"Roll-on product" means an antiperspirant or deodorant that dispenses active ingredients by rolling a wetted ball or wetted cylinder on the affected area.

"Rubber and vinyl protectant" means a product designed to protect, preserve or renew vinyl, rubber, and plastic on vehicles, tires, luggage, furniture, and household products such as vinyl covers, clothing, and accessories. This term does not include products primarily designed to clean the wheel rim, such as aluminum or magnesium wheel cleaners, and tire cleaners that do not leave an appearance-enhancing or protective substance on the tire.

"Rubbing alcohol" means a product containing isopropyl alcohol (also called isopropanol) or denatured ethanol and labeled for topical use, usually to decrease germs in minor cuts and scrapes, to relieve minor muscle aches, as a rubefacient, or for massage.

"Safety can" means a closed container that has a nominal capacity of five gallons or less, having a flash-arresting screen, spring-closing lid and spout cover and that is designed so that it will safely relieve internal pressure when exposed to fire.

"Sealant and caulking compound" means a product with adhesive properties that is designed to fill, seal, waterproof, or weatherproof gaps or joints between two surfaces. This term does not include roof cements and roof sealants, insulating foams, removable caulking compounds (that is, compounds which temporarily seal windows or doors for three to six month time intervals), clear/paintable/water

resistant caulking compounds (that is, compounds which contain no appreciable level of opaque fillers or pigments, transmit most or all visible light through the caulk when cured, are paintable, and are immediately resistant to precipitation upon application), floor seam sealers, products designed exclusively for automotive uses, or sealers that are applied as continuous coatings.

"Semisolid" means a product that, at room temperature, will not pour, but will spread or deform easily, including gels, pastes, and greases.

"Shaving cream" means an aerosol product [which] that dispenses a foam lather intended to be used with a blade or cartridge razor, or other wet-shaving system, in the removal of facial or other [bodily] body hair.

"Silicone-based multi-purpose lubricant" means a product that is a lubricant which:

1. Is designed and labeled to provide lubricity primarily through the use of silicone compounds including, but not limited to, polydimethylsiloxane;
2. Is designed and labeled for general purpose lubrication, or for use in a wide variety of applications; and
3. Is not designed and labeled exclusively to release manufactured products from molds.

...

"South Coast Air Quality Management District Rule" means a rule issued by California's South Coast Air Quality Management District (SCAQMD).

"Special purpose spray adhesive" means an aerosol adhesive that is a mounting adhesive, a flexible vinyl adhesive, a polystyrene foam adhesive, an automobile headliner adhesive, a polyolefin adhesive, a laminate repair/edgebanding adhesive, or an automotive engine compartment adhesive.

"Spill-proof spout" means any spout that complies with the applicable standards specified at N.J.A.C. 7:27-24.8.

"Spill-proof system" means any configuration of portable fuel container and firmly attached spout that complies with the applicable standards at N.J.A.C. 7:27-24.8.

"Spot remover" means a product designed to clean localized areas, or remove localized spots or stains on cloth or fabric such as drapes, carpets, upholstery, and clothing, that does not require subsequent laundering to achieve stain removal. This term does not include dry cleaning fluid, laundry prewash, carpet and upholstery cleaner, or multi-purpose solvent.

"Spout" means, with respect to a portable fuel container, any device that can be firmly attached to the container and that serves as the conduit through which the contents of the portable fuel container may be poured out of the container.

"Spray buff product" means a [consumer] product designed to restore a worn floor finish in conjunction with a floor buffing machine and special pad.

"Stick product" means an antiperspirant or deodorant that contains active ingredients in a solid matrix form, and that dispenses the active ingredients by frictional action on the affected area.

"Structural waterproof adhesive" means [a household] an adhesive [that:

1. Is designed for applications where the bond line must be resistant to condition] whose bond lines are resistant to conditions of continuous immersion in fresh or salt water[;], and

[2. Has passed] that conforms with Federal Specification [MMM-A-181] MMM-A-181D (Type I, Grade A)[, and MIL-A-46051 (Type 1, Grade A and Grade C)].

"Target fuel tank" means any receptacle that receives fuel from the portable fuel container.

"Terrestrial" means to live on or grow from land.

"Tire sealant and inflation" means a pressurized product designed to temporarily inflate and seal a leaking tire.

"Type A propellent" means a compressed gas such as CO_2, N_2, N_2O, or compressed air, used as a propellent and either incorporated with the product or contained in a separate chamber within the product's packaging.

"Type B propellent" means any halocarbon used as a propellent, including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), and hydrofluorocarbons (HFCs).

"Type C propellent" means any propellent not a Type A or Type B propellent, including propane, isobutane, n-butane, and dimethyl ether (also known as dimethyl oxide).

"Undercoating" means an aerosol product designed to impart a protective, nonpaint layer to the undercarriage, trunk interior, and/or firewall of motor vehicles to prevent the formation of rust or to deaden sound. This term includes, but is not limited to, rubberized, mastic, or asphaltic products.

"Usage directions" means the text or graphics on the product's principal display panel, label, or accompanying literature that describes to the end user how or in what quantity the product is to be used.

"Variance" means a temporary exemption based on extraordinary economic hardship granted in accordance with N.J.A.C. 7:27-24.4(i) and (j) to a manufacturer of a chemically formulated consumer product, which temporary exemption relieves the manufacturer from meeting an applicable VOC content standard in Table 1 at N.J.A.C. 7:27-24.4(a), or granted in accordance with N.J.A.C. 7:27-24.8(e) and (f) to a manufacturer of a portable fuel container, spout, or portable fuel container and spout, which temporary exemption relieves the manufacturer from meeting the standards at N.J.A.C. 7:27-24.8.

"Volatile organic compound" or "VOC" means any compound of carbon (other than carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate) which participates in atmospheric photochemical reactions. For the purpose of determining compliance with emission limits or content standards, VOC shall be measured by test methods in the approved SIP (such as N.J.A.C. 7:27B-3) or 40 CFR Part 60, Appendix A, as applicable, or which have been approved in writing by the Department and are acceptable to EPA. This term excludes those compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. As of April 9, 1998, the compounds and classes of perfluorocarbons excluded from EPA's definition of VOC at 40 CFR 51.100(s) are set forth below:

methane
ethane
methylene chloride (dichloromethane)
1,1,1-trichloroethane (methyl chloroform)
1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)
trichlorofluoromethane (CFC-11)
dichlorodifluoromethane (CFC-12)
chlorodifluoromethane (HCFC-22)
trifluoromethane (HFC-23)
1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114)
chloropentafluoroethane (CFC-115)
2,2-dichloro-1,1,1-trifluoroethane (HCFC-123)
1,1,1,2-tetrafluoroethane (HFC-134a)
1,1-dichloro-1-fluoroethane (HCFC-141b)
1-chloro-1,1-difluroethane (HCFC-142b)
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
pentafluoroethane (HFC-125)
1,1,2,2-tetrafluoroethane (HFC-134)
1,1,1-trifluoroethane (HFC-143a)
1,1-difluoroethane (HFC-152a)
parachlorobenzotrifluoride (PCBTF)
cyclic, branched or linear completely methylated siloxanes
acetone
perchloroethylene (tetrachloroethylene)
3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca)
1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb)
1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee)
difluoromethane (HFC-32)
ethylfluoride (HFC-161)
1,1,1,3,3,3-hexafluoropropane (HFC-236fa)
1,1,2,2,3-pentafluoropropane (HFC-245ca)

1,1,2,3,3-pentafluoropropane (HFC-245ea)
1,1,1,2,3-pentafluoropropane (HFC-245eb)
1,1,1,3,3-pentafluoropropane (HFC-245fa)
1,1,1,2,3,3-hexafluoropropane (HFC-236ea)
1,1,1,3,3-pentafluorobutane (HFC-365mfc)
chlorofluoromethane (HCFC-31)
1-chloro-1-fluoroethane (HCFC-151a)
1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a)
1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$)
2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OCH_3$)
1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$)
2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OC_2H_5$)
methyl acetate
perfluorocarbon compounds which fall into these classes:
cyclic, branched, or linear, completely fluorinated alkanes
cyclic, branched, or linear, completely fluorinated ethers with no unsaturations
cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations
sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine

If there is any conflict between the list at 40 CFR 51.100(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

"Wasp and hornet insecticide" means [an] any insecticide that is designed for use against wasps, hornets, yellow jackets or bees by allowing the user to spray [a high volume directed stream or burst] a directed stream or burst from a [safe] distance at the intended [pest or its] insects or their hiding place.

"Waterproofer" means a product designed and labeled exclusively to repel water from fabric or leather substrates. This term does not include fabric protectants.

...

"Web spray adhesive" means any aerosol adhesive that is not a mist spray or special purpose spray adhesive.

...

7:27-24.2 Applicability[, exemptions, and exclusions]

(a) This subchapter applies to any person who sells, offers for sale, holds for sale, distributes, supplies, or manufactures [any consumer product] for [use] sale in New Jersey [as specified at N.J.A.C. 7:27-24.3] any consumer product in (b) or (c) below and that is for use in New Jersey by a consumer or by a person who uses the product in providing a service.

(b) This subchapter applies to the following consumer products, unless the product is excluded under (d) or (e) below:

1. A chemically formulated consumer product which belongs to any of the chemically formulated consumer products categories listed in Table 24A at N.J.A.C. 7:27-24.4(a); and

2. A portable fuel container and spout.

(c) Manufacturers of chemically formulated consumer products that are not covered by (b)1 above but that contain greater than five percent by weight VOC having a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (one millimeter of mercury), absolute or greater measured at standard conditions, shall comply with the recordkeeping requirements at N.J.A.C. 7:27-24.6(c) through (e) and (i). However, the manufacturers of such chemically formulated consumer products are not subject to the following requirements: N.J.A.C. 7:27-24.3(e); 24.4; 24.5; 24.6(a), (b), (f) through (h) and (j); and 24.7.

[(b) The provisions of N.J.A.C. 7:27-24.3, 24.4 and 24.5 below do]

(d) This subchapter does not apply to the following chemically formulated consumer products:

[1. Any consumer product that is sold, supplied, offered for sale, held for sale, or manufactured for sale in New Jersey for shipment and use exclusively outside of the State of New Jersey. For such products that do not comply with the VOC content limits at N.J.A.C. 7:27-24.3, the shipping documentation shall include a statement that the shipment is not for sale and use in New Jersey and shall include the immediate destination. Documentation of product shipments shall be made available to representatives of the Department upon request;]

1. Any architectural coating. Architectural coatings are subject to the requirements of N.J.A.C. 7:27-23; and coating operations that are part of manufacturing processes are subject to the requirements of N.J.A.C. 7:27-16;

2. Any bait station insecticide [that contains], if the bait [that] is not more than 0.5 ounces by weight;

3. Any air freshener or any insecticide which contains at least 98 percent by weight [para-dichlorobenzene] paradichlorobenzene;

4. Any air freshener consisting entirely of one or more of the following:

i. Fragrance;

ii. Inorganic compounds;

iii. Compounds excluded from the definition of "VOC," as set forth at N.J.A.C. 7:27-24.1; and

iv. [The compounds specified in (f) below; and] **Any "low vapor pressure VOC," as that term is defined at N.J.A.C. 7:27-24.1;**

5. Any [household adhesive sold in] of the following adhesives:

i. [A container of] **An adhesive sold in a package holding one fluid ounce or less; [or]**

ii. **A [container] contact adhesive that is a non-aerosol product and that is sold in units of product, less packaging, which consist of more than one [U.S.] gallon [(128 fluid ounces).]; and**

iii. **Either of the following adhesives, provided that it is a non-aerosol product and that it is sold in units of product, less packaging, which weigh more than one pound and consist of more than 16 fluid ounces:**

(1) A construction, panel, and floor covering adhesive; and

(2) A general purpose adhesive;

6. Any sealant and caulking compound, if the compound is sold in units of product, less packaging, which weigh more than one pound and consist of more than 16 fluid ounces; and

7. Any hospital or medical disinfectant.

[(c) The maximum allowable VOC content limits (percent by weight) in N.J.A.C. 7:27-24.3 below do not apply to any consumer product manufactured prior to April 30, 1996, provided that the product is labeled with the date of manufacture or a date code as specified at N.J.A.C. 7:27-24.4(b) below which shows that the product was manufactured prior to April 30, 1996.

(d) The maximum allowable VOC content limits in N.J.A.C. 7:27-24.3 below do not apply to any consumer product if CARB has granted to the manufacturer of that product an Innovative Product Exemption pursuant to the CARB's consumer products regulations at Title 17, Subchapter 8.5, Article 1, Section 94503.5 or Article 2, Section 94511 of the California Code of Regulations, provided that the manufacturer claiming this exclusion submits a copy of the CARB exemption decision and CARB's statement of the conditions of its approval of the exemption to the following address:

Attn: Innovative Consumer Product
Bureau of Air Quality Planning
Department of Environmental Protection—CN 418
401 East State Street, 7th Floor
Trenton, New Jersey 08625-0418

(e) The maximum allowable VOC content limits in N.J.A.C. 7:27-24.3 below do not apply to any consumer product if an agency of another state which has an adopted consumer product variance provision in its rules as of December 2, 1995 has granted to the manufacturer of that product a variance (such as pursuant to the CARB consumer products regulations at Title 17, Subchapter 8.5, Article 1, Section 94514 or Article 2, Section 94505 of the California Code of Regulations or pursuant to Texas Natural Resources Conservation Commission's regulations at Title 30, Chapter 115, subchapter G, paragraph 613). This exclusion shall be effective in New Jersey until the other state agency's approved variance expires or is revoked, at which time the exclusion from the requirements of this subchapter shall automatically expire. This exclusion shall be effective in New Jersey provided that the manufacturer claiming this exclusion submits a copy of the state agency's exemption decision and statement of the conditions of its approval of the exemption to the following address:

Attn: Consumer Product Variance
Bureau of Air Quality Planning
Department of Environmental Protection—CN 418
401 East State Street, 7th Floor
Trenton, New Jersey 08625-0418]

(e) This subchapter does not apply to the following types of portable fuel containers:

1. A safety can meeting the requirements of Federal regulations at 29 C.F.R. 1926;

2. A portable fuel container if the container has a nominal capacity less than or equal to one quart;

3. A rapid refueling device with nominal capacity greater than or equal to four gallons, if the device:

i. Is designed for use in officially sanctioned off-highway motorcycle competitions;

ii. Creates a leak-proof seal against a target fuel tank; or

iii. Is designed to operate in conjunction with a receiver permanently installed on the target fuel tank; or

4. A portable fuel tank manufactured specifically to deliver fuel through a hose attached between the portable fuel tank and the outboard engine for the purpose of operating the outboard engine.

[(f) The following compounds are excluded when determining compliance with the VOC limits specified at N.J.A.C. 7:27-24.3 below:

1. Any VOC which exerts a vapor pressure less than or equal to 0.1 millimeters of mercury at 20 degrees Celsius;

2. Any VOC which consists of more than 12 atoms of carbon per molecule, if its vapor pressure is unknown;

3. Any VOC which has a melting point higher than 20 degrees Celsius and does not sublime, if its vapor pressure is not known; or

4. Any fragrances up to a combined level of two percent by weight contained in any consumer product.]

(f) The provisions at N.J.A.C. 7:27-24.4(a) and 24.8 do not apply to a consumer product that is manufactured in New Jersey, or that is sold in New Jersey by a manufacturer or a distributor, provided that:

1. The product is for shipment and use exclusively outside of New Jersey;

2. The manufacturer or distributor ensures that the product's shipping documentation includes a statement that the shipment is not for sale and use in New Jersey and gives its immediate shipping destination;

3. The manufacturer or distributor makes the shipping documentation available to the Department, upon written request, for any product it has shipped or received;

4. The manufacturer or distributor demonstrates, to the satisfaction of the Department, that it has taken reasonably prudent precautions to ensure that the product is not offered for sale, held for sale, sold, or otherwise supplied to a retail outlet or a consumer located in New Jersey; and

5. The manufacturer or a distributor does not offer for sale, hold for sale, sell, or otherwise supply any quantity of the product to a retail outlet located in New Jersey, and has not knowingly allowed or enabled another person to do so.

[(g) The requirements of N.J.A.C. 7:27-24.4(b) and (c) below do not apply to consumer products registered under Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA 7 U.S.C. §136-136y).]

(g) No manufacturer shall be held liable for the sale of a consumer product that does not comply with the requirements of this subchapter to a consumer in New Jersey if:

1. The product was manufactured for use exclusively outside of New Jersey; and

2. The manufacturer meets each of the obligations listed in (f)2 through 5 above.

(h) A retailer who sells, offers for sale, or holds for sale in New Jersey a chemically formulated consumer product that violates the VOC content standards at N.J.A.C. 7:27-24.4(a) or a portable fuel container and/or spout that violates the design standards at N.J.A.C. 7:27-24.8(a) and (b) may demonstrate compliance with N.J.A.C. 7:27-24.4(a) or 24.8(a) and (b), as applicable, if the retailer provides any one or more of the following types of documentation with respect to its purchase of the consumer product, portable fuel container and/or spout in question:

1. Written communication between the retailer and the manufacturers and distributors that the retailer will accept only consumer products for sale in New Jersey that comply with N.J.A.C. 7:27-24;

2. Written agreements between the retailer and the manufacturers and distributors in which the manufacturers and distributors commit to supply to the retailer only consumer products that comply with N.J.A.C. 7:27-24; or

3. The retailer's use of invoices, purchase orders and other contractual and billing documents, which specify that the retailer will only accept consumer products that comply with N.J.A.C. 7:27-24.

7:27-24.3 General provisions

(a) Compliance with this subchapter does not exempt a manufacturer, distributor, or retailer of a product regulated under this subchapter from the obligation to also comply with any and all other applicable Federal and State laws and rules, including State fire codes, safety codes, and other safety regulations. Any finding by the Department that a manufacturer, distributor, or retailer of a product is in compliance with this section shall not be construed to be a determination of compliance with such other laws and rules.

(b) Upon the written request of the Department, any person who is subject to this subchapter shall:

1. Identify the distributor, manufacturer, or other person from whom the product identified in the written request was obtained; and

2. Make the shipping documentation for the product identified in the written request available to the Department for any product it has shipped or received.

(c) Except as provided at N.J.A.C. 7:27-24.5(b), any person who submits information to the Department pursuant to this subchapter may assert a confidentiality claim for that information in accordance with N.J.A.C. 7:27-1.6. The Department will process and evaluate confidentiality claims and treat information claimed to be confidential in accordance with N.J.A.C. 7:27-1.6 through 1.30.

(d) A non-electronic submittal required pursuant to this subchapter shall be sent to the following address:

Bureau of Air Quality Planning
New Jersey Department of Environmental Protection
PO Box 418
401 East State Street
Trenton, New Jersey 08625-0418

(e) Each manufacturer and distributor of a consumer product subject to N.J.A.C. 7:27-24.2(b) shall include on the invoice, bill of lading, or other shipping document provided to the distributor or retailer receiving the product in New Jersey a statement indicating that the product included on that shipping document and subject to N.J.A.C. 7:27-24.2(b), shipped by that manufacturer or distributor for sale in New Jersey, is in compliance with this subchapter. These documents shall be maintained by the manufacturer, distributor and/or retailer for no less than five years and shall be made available by the document recipient to the Department upon written request.

(f) Any submittal to the Department, other than a registration or re-registration, shall be certified in accordance with N.J.A.C. 7:27-1.39, Certification of information.

(g) In each written request by the Department for information, the Department shall specify the information to be reported and may specify the format in which it is to be reported.

7:27-[24.3]24.4 [VOC content standards] Chemically formulated consumer products: standards

(a) Except as provided at N.J.A.C. 7:27-[24.2(b) through (e) above and subsection (c)] 24.2 and in (c) and (i) below, no person shall sell, offer for sale, hold for sale, distribute, supply, or manufacture[, distribute, or supply any consumer product for use] for sale in New Jersey [which] a chemically formulated consumer product that belongs to a chemically formulated consumer product category listed in Table 1 below, that was manufactured on or after [April 30, 1996] the operative date in Table 1 below, and that contains a VOC content in excess of the [limits] applicable limit specified in Table 1 below[:].

TABLE 1

VOC CONTENT LIMITS FOR CHEMICALLY FORMULATED CONSUMER PRODUCTS

Chemically Formulated Consumer Product Category	[Consumer Product Category] Form	Maximum Allowable VOC Content (percent by weight,[1] unless otherwise indicated)[2] State Standard Operative Date 4/30/96-12/31/04[3]	State Standard Operative Date 1/1/05
Adhesives	Aerosol:	75	
	Mist spray		65
	Web spray		55
	Special purpose spray adhesives:		
	Mounting, automotive engine compartment, and flexible vinyl		70
	Polystyrene foam and automotive headliner		65
	Polyolefin and laminate repair/ edgebanding		60
	Contact	80	80
	Construction, panel, and floor covering	40	15
	General purpose	10	10
	Structural waterproof	(Reserved)	15
	[Air freshener]		
Air fresheners	Single-phase [aerosol] aerosols	70	30
	Double-phase [aerosol] aerosols	30	25
	[Liquid/pump] Liquids/pump sprays	18	18
	[Solid/gel] Solids/gels	3	3
	[Antiperspirants]		
Antiperspirants	[Aerosol] Aerosols	[HVOC] 60 HVOC	40 HVOC 10 MVOC
	[Non-aerosol] Non-aerosols	[HVOC] 0 HVOC	0 HVOC 0 MVOC
Automotive brake cleaners			45
Automotive rubbing or polishing compounds			17
Automotive waxes, polishes, sealants or or glazes	Hard paste waxes		45
	Instant detailers		3
	All other forms		15
Automotive windshield washer fluids			35
	[Bathroom and tile cleaners]		
Bathroom and tile cleaners	Aerosols	7	7
	All other forms	5	5
Bug and tar remover			40
	[Carburetor choke cleaners]		
Carburetor or fuel-injection air intake cleaners	Aerosols	75	45
	Non-aerosols	75	45
Carpet and upholstery cleaners	Aerosols		7
	Non-aerosols (dilutables)		0.1
	Non-aerosols (ready-to-use)		3.0
Charcoal lighter material			0.02 lb start[4]
	[Cooking sprays, aerosol]		
Cooking sprays	Aerosols	18	18
	[Deodorants]		
Deodorants	[Aerosol] Aerosols	[HVOC] 20 HVOC	0 HVOC 10 MVOC
	[Non-aerosol] Non-aerosols	[HVOC] 0 HVOC	0 HVOC 0 MVOC
	[Dusting Aids]		
Dusting aids	[Aerosol] Aerosols	35	25
	All other forms	7	7
	[Engine decreasers]		

Engine degreasers	**Aerosols**	75	35
	Non-aerosols	75	5
Fabric protectants	[Fabric protectants]	75	60
	[Floor polishes/waxes]		
Floor polishes/waxes	Products for flexible flooring materials	7	7
	Products for nonresilient flooring	10	10
	Wood floor wax	90	90
Floor wax stripper	Non-aerosol:		
	For light or medium build-up		3
	For heavy build-up		12
	[Furniture maintenance products, aerosol]		
Furniture maintenance products	**Aerosols**	25	17
	All other forms except solid or paste		7
	[General purpose cleaners]		
General purpose cleaners	**Aerosols**	10	10
	Non-aerosols	10	4
General purpose degreasers	**Aerosols**		50
	Non-aerosols		4
	[Glass cleaners]		
Glass cleaners	Aerosols	12	12
	All other forms	8	
	Non-aerosols		4
Hair mousses	[Hair mousses]	16	6
Hair shines			55
Hair sprays	[Hair sprays]	80	55
Hair styling gels	[Hair styling gels]	6	6
Heavy-duty hand cleaner or soap			8
	[Household adhesives		
	Aerosol	75	
	Contact	80	
	Construction and panel	40	
	General purpose	10	
	Structural waterproof	(Reserved)]	
	[Insecticides]		
Insecticides	Crawling bug:	40	
	Aerosols		15
	All other forms		20
	Flea and tick	25	25
	Flying bug:	35	
	Aerosols		25
	All other forms		35
	Foggers	45	45
	Lawn and garden:	20	
	Non-aerosols		3
	All other forms		20
	Wasp and hornet		40
	[Laundry prewash]		
Laundry prewash	Aerosol/solids	22	22
	All other forms	5	5
Laundry starch products	[Laundry starch products]	5	5
Metal polishes/cleansers			30
Multi-purpose lubricants (excluding solid or semi-solid products)			50
Nail polish removers	[Nail polish removers]	85	75
Non-selective terrestrial herbicide	Non-aerosols		3
	[Oven cleaners]		
Oven cleaners	[Aerosol] Aerosols/pump sprays	8	8
	Liquids	5	5

Paint removers or strippers			50
Penetrants			50
Rubber and vinyl protectants	Aerosols		10
	Non-aerosols		3
Sealants and caulking compounds			4
Shaving creams	[Shaving creams]	5	5
Silicone-based multi-purpose lubricants (excluding solid or semi-solid products)			60
Spot removers	Aerosols		25
	Non-aerosols		8
Tire sealants and inflators			20
Undercoatings	Aerosols		40

Footnotes to Table:

[1]Weight is the product's total weight, exclusive of the packaging.

[2]The Federal VOC limits, which became operative December 10, 1998, are promulgated at 40 CFR 59, Subpart C, Table 1.

[3]On and after January 1, 2005, the State limits operative as of April 30, 1996 will no longer be applicable.

[4]See N.J.A.C. 7:27-24.4(h) for additional State requirements pertaining to charcoal lighter material.

(b) For [consumer products for which] the purpose of determining compliance with a VOC content limit set forth in Table 1 above, if the label, packaging, or accompanying literature specifically states that the consumer product should be diluted prior to use, the [limits specified in (a) above shall apply to] VOC content of the product shall be determined as follows:

1. If the label, packaging, or accompanying literature states that the product should be diluted with water or non-VOC solvent prior to use, the VOC content of the product shall be determined only after the minimum recommended dilution has taken place. Such minimum recommended dilution [does] shall not include recommendations for incidental use of a concentrated product to deal with limited special applications such as hard-to-remove soils or stains[.]; and

2. If the label, packaging, or accompanying literature states that the product should be diluted with any VOC solvent prior to use, the VOC content of the product shall be determined only after the maximum recommended dilution has taken place.

(c) [For those consumer products that are] Notwithstanding the provisions of (a) above and the specifications of Table 1 above, for a consumer product with a label that is registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. [Section] §136-136y), the [most] operative date of the [VOC standards specified in (a) above is April 30, 1997] applicable State standard is one year after the operative date specified in Table 1.

(d) A chemically formulated consumer product manufactured prior to the operative date specified for that product in Table 1 above, may be sold, supplied, or offered for sale after the specified operative date, if that product complies with the standards in effect at the time that product was manufactured, and if that product displays the date or date-code in accordance with the requirements at N.J.A.C. 7:27-24.5(d), (e) and (f).

(e) For the purpose of determining compliance with a VOC content limit set forth in Table 1 above, the VOC content of a consumer product shall not include the following:

1. Any low vapor pressure-VOC;

2. Any fragrances, up to a combined level of two percent by weight, contained in the product, not including the weight of any packaging; and

3. For an antiperspirant or deodorant, the following:

i. Any colorants contained in the product, up to a combined level of two percent by weight;

ii. With respect to the medium volatility organic compound (MVOC) content standards, ethanol; and

iii. Those VOCs that contain more than 10 carbon atoms per molecule and for which the vapor pressure is unknown, or that have a vapor pressure of two mm Hg or less at 20 degrees Celsius.

(f) If an aerosol adhesive could be classified in more than one chemically formulated consumer product category listed in Table 1, the standard for the category with the lowest applicable VOC limit applies.

(g) If anywhere on the principal display panel of a consumer product, any representation is made that the product may be used as, or is suitable for use as, a consumer product that belongs to more than one chemically formulated consumer product category in Table 1 at (a) above, then the lower VOC content limit shall apply. However, this subsection does not apply to general purpose cleaners, antiperspirants, and deodorant products.

(h) No person shall sell, offer for sale, hold for sale, distribute, supply, or manufacture for sale in New Jersey, on or after January 1, 2005, a charcoal lighter material product, even if it conforms with the VOC content standards in (a) above, unless the following requirements are met:

1. CARB or the air pollution agency of another state has issued certification that attests that it is satisfied that the VOC emissions from the ignition of charcoal with the charcoal lighter material are less than or equal to 0.020 pounds of VOC per start;

2. The certification is currently effective at the time of sale. The Department shall consider the certification to be in effect for as long as the issuing State agency considers the certification to remain in effect; and

3. The product usage directions for the charcoal lighter material provided on the label, packaging, or accompanying literature are the same as those on which the certification is based.

(i) A chemically formulated consumer product is exempt from (a) above if:

1. CARB, pursuant to its consumer products regulations (including all amendments and supplements) at Title 17, Subchapter 8.5, Article 1, Section 94503.5 or Article 2, Section 94511 of the California Code of Regulations, or the air pollution control agency of another state that has adopted a consumer product rule based on or substantially equivalent to the Ozone Transport Commission (OTC) "Model Rule for Consumer Products" dated November 29, 2001, including subsequent revisions (accessible at the OTC's website http://www.sso.org/otc/Publications/pub2.htm), has granted to the product's manufacturer an IPE, ACP, or variance for the product; and

2. The IPE, ACP, or variance is valid for use in New Jersey pursuant to (j) below.

(j) An IPE, ACP, or variance in (i) above shall not be valid for use in New Jersey to comply with this subchapter unless:

1. The IPE, ACP, or variance is currently in effect (the Department shall consider an IPE, ACP, or variance to be in effect if the issuing agency deems the exemption to be in effect);

2. The product (including its form) for which the IPE, ACP, or variance is being used to comply with this section meets the following:

i. The product belongs to a chemically formulated consumer product category that is subject to a VOC content limit set in Table 1 above; and

ii. The VOC content limit promulgated for this product by the agency that issued the IPE, ACP, or variance, is equal to or more stringent than the most stringent applicable VOC content limit in Table 1 above;

3. For a variance, the approval is based on the issuing agency's finding that:

i. Requiring the manufacturer's compliance with the standard would, because of reasons beyond the reasonable control of the applicant, result in extraordinary economic hardship for the manufacturer;

ii. The public interest in mitigating this hardship to the manufacturer outweighs the public interest in avoiding any increased emissions of air contaminants that would result from issuing the variance; and

iii. The manufacturer's proposed methods for achieving compliance with the standard can reasonably be implemented and will achieve compliance as expeditiously as possible;

4. For an IPE, the manufacturer demonstrates by clear and convincing evidence that, due to some characteristic of the product formulation, design, delivery systems, or other factor, the use of the product will result in less VOC emissions as compared to either the VOC emissions from a representative chemically formulated consumer product that complies with the VOC content limits specified in Table 1 above, or as compared to the calculated VOC emissions from a noncomplying representative product, if the product had been reformulated to comply with the VOC limits specified in Table 1 above;

5. Prior to relying on an IPE, ACP, or variance for compliance, the manufacturer has submitted to the Department, in accordance with (k) below, the following:

i. A statement that, for a specified chemically formulated consumer product that it manufactures, it intends to comply with this section under an IPE, ACP, or variance rather than meet the applicable VOC content standards in Table 1 above;

ii. The brand name of the consumer product, and the specific chemically formulated consumer product category in Table 1 above to which the product belongs, including its form(s) (if applicable);

iii. A copy of the document(s) setting forth the IPE, ACP, or variance; the issuing agency's approval; the issuing agency's conditions of its approval; the demonstration of (j)4 above if an IPE; and any documents from the issuing agency that subsequently modify or terminate its conditions of approval; documentation demonstrating compliance with the IPE, ACP or variance; and

iv. A statement that the IPE, ACP, or variance , as well as the product for which the IPE, ACP, or variance is being used, conforms with (j)1 through 4 above, as applicable; and

6. The manufacturer has included in its electronic registration, submitted pursuant to N.J.A.C. 7:27-24.5(a), (b) and (c), indication that for the specified product it is complying with this section under an IPE, ACP or variance.

(k) Any submittal made pursuant to (j)5 above shall be sent to the address given at N.J.A.C. 7:27-24.3(d) and the envelope or package shall be labeled as follows:

i. For an IPE, "Attention: Consumer Product Innovative Product Exemption";

ii. For an ACP, "Attention: Consumer Product Alternative Control Plan"; or

iii. For a variance, "Attention: Consumer Product Variance."

(l) On and after January 1, 2005, no person shall sell, offer for sale, hold for sale, distribute, supply, or manufacture for sale in New Jersey, an aerosol adhesive product that contains methylene chloride, perchloroethylene, or trichloroethylene, even if its VOC content conforms with the standards required pursuant to (a) above.

7:27-[24.4]24.5 [Administrative requirements] Chemically formulated consumer products: registration and labeling

(a) [Any] The manufacturer [that manufactures] of a chemically formulated consumer product [for sale in New Jersey] that is [required] subject to [meet a VOC content limit in] this subchapter pursuant to N.J.A.C. 7:27-[24.3 above] 24.2(b)1 shall [submit a registration report to] register or re-register (for manufacturers who have submitted registration prior to the operative date of this rule) with the Department [by no later than October 1, 1996. Any manufacturer of a new consumer product for sale in New Jersey that is required to meet a VOC content limit in N.J.A.C. 7:27-24.3 above shall submit a registration report by no later than five months after the initial date of manufacture for sale in New Jersey.] as follows:

1. The registration or re-registration shall be submitted to the Department on the form provided by the Department at http://www.state.nj.us/dep/baqp, and shall be submitted electronically, by email, on diskette, or on CD-ROM, unless:

i. Electronic submission would impose hardship on the manufacturer; and

ii. The Department is satisfied that a hardship exists and approves a written request from the manufacturer to submit the information on paper pursuant to (c) below;

2. The registration or re-registration shall be submitted in accordance with the following schedule:

i. For a chemically formulated consumer product sold in New Jersey prior to January 1, 2005, the registration or re-registration shall be submitted on or after (the operative date of these amendments) and prior to January 1, 2005; and

ii. For a chemically formulated consumer product sold in New Jersey on or after January 1, 2005, that was not sold in New Jersey prior to January 1, 2005, if the product belongs to a category that the manufacturer has not previously registered with the Department, the registration shall be submitted prior to selling the product in New Jersey;

3. If, subsequent to the submission of its registration, a manufacturer begins to manufacture a product for sale in New Jersey that belongs to a chemically formulated consumer product category that was not listed in the original registration, or if information provided in the registration changes, the manufacturer shall submit a revised registration including the new information within 90 days of the change; and

[1.]4. The registration or re-registration shall include the following information:

i. The name of the manufacturer;

ii. The full mailing address of the manufacturer;

iii. The name and telephone number of a contact person; [and]

iv. [A] The chemically formulated consumer product category (as listed in Table 1 at N.J.A.C. 7:27-24.4) to which the manufacturer's product belongs or, if the manufacturer manufactures multiple products which belong to more than one chemically formulated consumer product category, a list of the chemically formulated consumer product categories [of] to which the products [manufactured that are subject to a VOC content limit at N.J.A.C. 7:27-24.3] belong (for example: [lawn and garden insecticides, aerosol household] adhesive[s], floor [wax for non-resilient flooring).] polish or wax, insecticide); and

v. If the manufacturer is, for any product, complying with the requirements of this subchapter through one of the exemptions listed at N.J.A.C. 7:27-24.4(i), the following:

(1) Product brand name;

(2) The chemically formulated consumer product category to which the product belongs;

(3) The type of exemption; that is, IPE, ACP, or variance; and

(4) The state that previously approved the IPE, ACP, or variance and the issuing state's approval date.

[2. The registration shall be sent to the Department at the following address:

Attn: Consumer Product Registration
Bureau of Air Quality Planning
Department of Environmental Protection—PO Box 418
401 East State Street
Trenton, New Jersey 08625-0418]

(b) Notwithstanding N.J.A.C. 7:27-24.3(c), any information submitted as part of the registration or re-registration pursuant to (a) above and (e) below may not be claimed to be confidential, including under the procedures set forth at N.J.A.C. 7:27-1.6 through 1.29.

(c) If a manufacturer seeks approval to submit its registration or re-registration on paper, rather than electronically, the following apply:

1. The manufacturer shall submit the written request to the address given at N.J.A.C. 7:27-24.3(d), and the envelope in which the written request is submitted shall be labeled as follows: "Attention: Request for On-Paper Submittal of Consumer Product Registration";

2. The written request shall include an explanation of the hardship that electronic submission would impose on the manufacturer; and

3. The Department shall not approve a manufacturer's written request to submit its registration on paper unless the Department is satisfied that electronic submission would impose hardship on the manufacturer.

[(b)](d) [Each] Except as provided at (f) below, a manufacturer of a chemically formulated consumer product subject to this subchapter pursuant to N.J.A.C. 7:27-[24.3 above] 24.2(b)1 shall clearly display, on each [consumer] product [container or packaging] package, the day, month, and year in which the product was manufactured[(], or a code indicating such date[). This subsection does not apply to products which are] (that is, a date-code). The date or date-code shall be located on the packaging, or inside the cover or cap, so that it is readily observable or obtainable without disassembling any part of the packaging, such as by simply removing the cover or cap.

(e) If for any consumer product, the manufacturer uses a date-code to comply with (d) above, the manufacturer shall submit an explanation of the date-code to the Department. The explanation shall be submitted with the electronic registration or re-registration, in accordance with the requirements of (a), (b) and (c) above.

(f) Subsection (d) above does not apply to a product if:

1. The product contains no VOC; or contains 0.10 percent VOC, or less, by weight;

2. The product is offered to consumers free of charge for the purpose of sampling the product[.]; or

3. The product's label is registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. §136-136y).

[(c) If a manufacturer uses a code indicating the date of manufacture in order to comply with (b) above, the manufacturer shall provide to the Department or its representative within 30 days a description of such code upon request.]

(g) For aerosol adhesive products manufactured on or after January 1, 2005, the manufacturer shall ensure that:

1. The following information shall be clearly displayed on each product package:

i. The name (as given in Table 1 at N.J.A.C. 7:27-24.4(a)) of the specific aerosol adhesive category to which the product belongs (for example, automobile headliner adhesive) or, an abbreviation of the name of the category;

ii. The applicable VOC content standard to which the product is subject, under Table 1 at N.J.A.C. 7:27-24.4(a), expressed as a percentage by weight; and

iii. If the product is a special purpose spray adhesive, the applicable substrate and/or application that qualifies the product as a special purpose spray adhesive, or an abbreviation of the substrate and/or application;

2. If abbreviation(s) are used, as allowed under (g)1i and iii above, an explanation of the abbreviation shall be submitted electronically with the electronic registration or re-registration; and

3. The information required under (g)1 above shall be displayed on the product packaging such that it is readily observable without removing or disassembling any portion of the product packaging. For the purposes of this subsection, information may be displayed on the bottom of a package as long as it is clearly legible without removing any product packaging.

(h) For floor wax strippers which are non-aerosol products manufactured on or after January 1, 2005:

1. The manufacturer shall ensure that:

i. The label specifies a dilution ratio for light or medium build-up of polish that results in an as-used VOC concentration of three percent or less by weight; and

ii. If the floor wax stripper is also intended to be used for removal of heavy build-up of polish, the label specifies a dilution ratio for heavy build-up of polish that results in an as-used VOC concentration of 12 percent or less by weight; and

2. The terms "light build-up," "medium build-up" or "heavy build-up" are not specifically required to be used on the label, as long as comparable terminology is used.

(i) No person shall erase, alter, deface, or otherwise remove or make illegible any information required to be displayed on any product packaging under (d), (g) or (h) above, prior to the final sale of the product to a consumer.

7:27-24.6 Chemically formulated consumer products: recordkeeping and reporting

[(d)](a) Each manufacturer of a chemically formulated consumer product subject to [a VOC content limit in] this subchapter pursuant to N.J.A.C. 7:27-[24.3]24.2(b)1 shall keep the following records [demonstrating compliance with the VOC content limits. Such records shall consist of the]:

1. The results of any testing [or the calculations based upon the constituents used to manufacture the product as required at N.J.A.C. 7:27-24.5(a) or (b). These records are required to be kept for a period of at least three years. Such records shall be made available within 30 days of receipt of request by the Department.] performed to demonstrate compliance with a VOC content limit;

2. If compliance with a VOC content limit is demonstrated through calculation of the VOC content of the product pursuant to N.J.A.C. 7:27-24.7(b), the data and formulas used in the calculation, the calculations made, and the result of the calculation; and

3. Any information that may be required to be submitted to the Department pursuant to (b)3 below.

(b) The Department may require the manufacturer of a chemically formulated consumer product subject to this subchapter pursuant to N.J.A.C. 7:27-24.2(a) to submit information which may include the following:

1. The name, address, and telephone number of the manufacturer and the name and telephone number of the manufacturer's designated contact person;

2. Any claim of confidentiality asserted by the manufacturer pursuant to N.J.A.C. 7:27-24.3(c) for information required to be submitted to the Department regarding any of the manufacturer's products;

3. For any of the manufacturer's products subject to the standards in Table 1 at N.J.A.C. 7:27-24.4(a), the following information (if the product is sold in more than one form, this information shall be provided separately for each product form):

i. The product brand name;

ii. The product label;

iii. The chemically formulated consumer product category to which the product belongs;

iv. The form (if applicable) of the product, and a list of all the forms in which the product is sold;

v. Identification of the product as a household product, institutional product, or both;

vi. Sales of the product within the State, given to the nearest pound in pounds of product (not including the weight of packaging) per year, and the method used to calculate the sales; and

vii. For each product, the net percent by weight of the total product less packaging, comprised of the following, rounded to the nearest one-tenth of a percent (0.1 percent):

(1) Total VOC;

(2) Total of carbon-containing compounds excluded from the definition of "VOC," as defined at N.J.A.C. 7:27-24.1;

(3) Total LVP-VOCs that are not fragrances;

(4) Total of all other carbon-containing compounds that are not fragrances;

(5) Total of all non-carbon-containing compounds;

(6) Total fragrances; and

(7) Total paradichlorobenzene;

viii. For each product containing greater than two percent by weight fragrance:

(1) The percent of fragrance that are LVP-VOCs; and

(2) The percent of fragrance that are all other carbon-containing compounds; and

ix. For a product that is an antiperspirant or deodorant and that contains greater than two percent by weight colorant, the following:

(1) Total LVP-VOCs in the colorant; and

(2) Total of all other carbon-containing compounds in the colorant;

x. For each product, the identity, including the specific chemical name and associated Chemical Abstract Services (CAS) number, of the following:

(1) Each compound excluded from the definition of "VOC," as set forth at N.J.A.C. 7:27-24.1; and

(2) Each LVP-VOC that is not a fragrance; and

xi. If the product includes a propellent, the following:

(1) The weight of the propellent, given as a percentage of the weight of the product sold, not including packaging, rounded to the nearest one-tenth of a percent (0.1 percent); and

(2) Identification of the type of propellent (Type A, Type B, Type C, or a blend of the different types).

(c) Each manufacturer of a chemically formulated consumer product subject to this subchapter pursuant to N.J.A.C. 7:27-24.2(c) shall maintain calendar year records of products containing greater than five percent by weight VOC, having a vapor pressure or sum of partial pressures of organic substances of 0.02 pounds per square inch (one millimeter of mercury) absolute or greater, measured at standard conditions, produced by that manufacturer for sale in New Jersey. Different forms of a product that have VOC contents within a range of five percent by weight may be combined as a single type of product for the purpose of this recordkeeping, provided the maximum weight percent and maximum weight per unit within the product category is recorded. For each product the following calendar year records shall be maintained:

1. The number of units produced;

2. The product's VOC content by weight per unit and percent weight; and

3. The approximate number of units sold in New Jersey.

(d) Records sufficient to provide the information required pursuant to (a), (b) and (c) above shall be maintained by each manufacturer for five years after each calendar year for which the data is collected.

(e) Within 90 days of receipt of a written request by the Department, each manufacturer or distributor of a chemically formulated consumer product subject to this subchapter shall submit the requested information [required to be kept in (d) above in addition to estimates of the quantities of consumer products sold in New Jersey on forms provided by the Department] specified in (a), (b) or (c) above to the Department.

(f) A person who holds for sale, offers for sale, or sells any chemically formulated consumer product [to a consumer] subject to this subchapter shall, [upon] within 30 days of receipt of a written request, identify the distributor, manufacturer, or [company] other person from whom the consumer product was obtained to the Department [or its representative upon request].

(g) Within 30 days of a receipt of the Department's written request, the manufacturer of a charcoal lighter material product shall submit to the Department:

1. Documentation for the product's certification issued by CARB or the air pollution agency of another state in accordance with N.J.A.C. 7:27-24.4(h); and

2. Any conditions of approval established by the agency that issued the certification.

[(g) Any person who submits information to the Department pursuant to this subchapter may assert a confidentiality claim for that information in accordance with N.J.A.C. 7:27-1.6. The Department will process and evaluate confidentiality claims in accordance with N.J.A.C. 7:27-1.6 through 1.30 inclusive.]

(h) If the Department requests in writing that any manufacturer of a chemically formulated consumer product test any of its products that are sold, offered for sale, held for sale, distributed, supplied, or manufactured for sale in New Jersey to determine the VOC content of the product, the manufacturer shall submit the test report to the Department within 60 days of the manufacturer's receipt of the written request.

(i) For any record required to be kept or reported in accordance with this section, or that is used or relied on in accordance with this subchapter, no person shall create, alter, falsify, or otherwise modify such record, in such a way that the record does not accurately reflect the information it purports to present (for instance, the amount of product produced, the constituents used to manufacture a product, or the chemical composition of the individual product).

(j) IPE, ACP, and variance documentation shall be submitted to the Department in accordance with N.J.A.C. 7:27-24.4(j)5 and (k).

7:27-[24.5]24.7 [Test methods] Chemically formulated consumer products: testing

(a) Upon the written request of the Department, any manufacturer of a chemically formulated consumer product subject to the requirements of this subchapter shall test any of its products that are sold, offered for sale, held for sale, distributed, supplied, or manufactured for sale in New Jersey to determine the VOC content of the product (or in the case of charcoal lighter material, its emissions per start). Such testing shall be performed utilizing the test methods in (b) through (g) below, as applicable.

[(a) Any person performing tests to determine compliance with] (b) Testing to determine compliance with the VOC content limits [in] at N.J.A.C. 7:27-[24.3]24.4(a) shall [use methods which are] be performed using:

1. CARB Method 310, Determination of Volatile Organic Compounds (VOC) in Consumer Products, adopted September 25, 1997, amended September 3, 1999, including subsequent revisions, incorporated by reference herein; or

2. An alternative method which is shown to accurately determine the concentration of VOCs in a product. Such methods [shall include any methods issued by EPA or CARB which have been established for the measurement of VOCs in consumer products] must first be approved in writing by the Department and EPA.

[(b)](c) Compliance [determinations] with a VOC content limit at N.J.A.C. 7:27-24.4(a) may also be demonstrated through calculation of the VOC content of a consumer product from records of the amounts of constituents used to make the product[.] (excluding packaging), pursuant to the following criteria:

1. Compliance determinations based on these records may not be used unless the manufacturer of a chemically formulated consumer product keeps, for each day of production, accurate records of the amount and chemical composition of the individual product constituents. These records must be kept for at least three years;

2. For the purposes of this subsection, the VOC content of a product shall be calculated according to the following equation:

$$\text{VOC Content} = \frac{(B-C)}{A} \times 100$$

where,

A = total net weight of a unit of product (excluding any packaging);
B = total weight of all VOCs in the constituents used to make the product, per unit;
C = total weight of VOCs exempted under N.J.A.C. 7:27-24.4(e), per unit; and

3. If the calculations for VOC content based on product records appear to demonstrate compliance with the VOC limits, but these calculations are contradicted by the results of product testing performed using CARB Method 310, the results of CARB Method 310 shall take precedence over the calculations based on product records and may be used to establish a violation of the requirements of the VOC content limits set forth in this subchapter.

[(c)](d) Testing to determine whether a product is a liquid or a solid shall be performed using ASTM D4359-90 (reapproved June, 2000), "Standard Test Method for Determining Whether a Material is a Liquid or a Solid," including subsequent revisions, which is incorporated by reference herein.

(e) Testing to determine compliance with the standards for charcoal lighter material shall be performed using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991), including subsequent revisions, which is incorporated by reference herein.

(f) Testing to determine distillation points of petroleum distillate-based charcoal lighter materials shall be performed using ASTM D86-90 (Sept. 28, 1990), including subsequent revisions, which is incorporated by reference herein.

(g) Testing to determine whether a material is a "plasticizer" may be determined using ASTM Method E260-91, including subsequent revisions, which is incorporated by reference herein.

(h) The Department may require any manufacturer that is required to perform testing pursuant to (a) above to provide to the Department product samples that are duplicates of the samples tested.

(i) Test methods can be obtained as follows:

1. ASTM test methods can be purchased from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959; Telephone (610) 832-9585; Fax (610) 832-9555; or ASTM test methods can be purchased from the ASTM website at http://www.ASTM.org;

2. SCAQMD test methods can be purchased from the South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, California 91765-0934; Telephone (909) 396-2162;

3. CARB Method 310 is available on the web at http://www.arb.ca.gov/testmeth/cptm/cptm.htm.

[7:27-24.6 Federal supersession

(a) If EPA promulgates any consumer or commercial product regulation pursuant to 42 U.S.C. §7511b(e) which conflicts with the applicability standards or VOC content limits in this subchapter, the applicability standards or VOC content limits of the conflicting portion of the Federal regulation shall automatically supersede the applicability standards or the VOC content limits in this subchapter as follows:

1. If the Federal regulation establishes a VOC content standard for a category of consumer products that is also regulated in this subchapter, the VOC content standard shall be superseded where:

i. The Federal VOC content standard is either more stringent or less stringent than the VOC content standard in this subchapter; or

ii. The Federal standard is expressed in units other than the units expressed in this subchapter (for example: percent by volume, weight of VOC per volume of product, or emissions per use);

2. If the Federal regulation establishes a scope of applicability for a category of consumer products that is also regulated in this subchapter, the scope of applicability in this subchapter shall be superseded where:

i. The scope of applicability of the category in the Federal rule is defined differently; or

ii. The scope of applicability in the Federal rule provides a different exclusion or exemption as to which products within the category are required to meet the VOC standard; or

3. If the Federal regulation excludes specific compounds or substances from the allowable VOC content for any specific category of consumer products or all categories of consumer products, the same compounds or substances shall be excluded from the allowable VOC content for the same categories in this subchapter.

(b) If the Federal regulation does not establish a VOC content standard (or does not otherwise limit the emissions of VOC) for a category of consumer products that is regulated in this subchapter, the provisions of this subchapter that regulate such a category shall remain in full force and effect.]

7:27-24.8 Portable fuel containers and spill proof spouts: standards

(a) Except as provided at N.J.A.C. 7:27-24.2(e), no person shall sell, offer for sale, hold for sale, distribute, supply, or manufacture for sale in New Jersey on or after January 1, 2005, any portable fuel container or any portable fuel container and spout which, at the time of sale or manufacture, does not meet all of the following performance standards for spill-proof systems:

1. Has an automatic shut-off that stops the fuel flow before the target fuel tank overflows;

2. Automatically closes and seals when removed from the target fuel tank and remains completely closed when not dispensing fuel;

3. Has only one opening for both filling and pouring; and

4. Provides a fuel flow rate and fill level of:

i. Not less than one-half gallon per minute for portable fuel containers with a nominal capacity of:

(1) Less than or equal to 1.5 gallons and fills to a level less than or equal to one inch below the top of the target fuel tank opening; or

(2) Greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to one inch below the top of the target fuel tank opening if the spill-proof system clearly displays the phrase "Low Flow Rate" in type of 34 point or greater on each spill-proof system or label affixed thereto, and on the accompanying package, if any;

ii. Not less than one gallon per minute for portable fuel containers with a nominal capacity greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1.25 inches below the top of the target fuel tank opening; or

iii. Not less than two gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons;

5. Does not exceed a permeation rate of 0.4 grams per gallon per day; and

6. Is warranted by the manufacturer for a period of not less than one year against defects in materials and workmanship.

(b) Except as provided at N.J.A.C. 7:27-24.2(e), no person shall sell, offer for sale, hold for sale, distribute, supply, or manufacture for sale in New Jersey on or after January 1, 2005, any spout which, at the time of sale or manufacture, does not meet all of the following performance standards for spill-proof spouts:

1. Has an automatic shut-off that stops the fuel flow before the target fuel tank overflows;

2. Automatically closes and seals when removed from the target fuel tank and remains completely closed when not dispensing fuel;

3. Provides a fuel flow rate and fill level of:

i. Not less than one-half gallon per minute for portable fuel containers with a nominal capacity of:

(1) Less than or equal to 1.5 gallons and fills to a level less than or equal to one inch below the top of the target fuel tank opening; or

(2) Greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to one inch below the top of the target fuel tank opening if the spill-proof spout clearly displays the phrase "Low Flow Rate" in type of 34 point or greater on the

accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto;

ii. Not less than one gallon per minute for portable fuel containers with a nominal capacity greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1.25 inches below the top of the target fuel tank opening; or

iii. Not less than two gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons; and

4. Is warranted by the manufacturer for a period of not less than one year against defects in materials and workmanship.

(c) Notwithstanding the provisions of (a) and (b) above, a portable fuel container or spout or both portable fuel container and spout manufactured before January 1, 2005 may be sold, offered for sale, held for sale, distributed, or supplied for sale until January 1, 2006 if the date of manufacture or a date-code representing the date of manufacture is clearly displayed on the portable fuel container or spout and on the packaging (if any) in which it is sold. The date of manufacture or date-code shall be located so that it is readily observable without disassembling any part of the packaging (if any). If the manufacturer uses a date-code to comply with this subsection, the manufacturer shall electronically register the product, including an explanation of the date-code, in accordance with the requirements at N.J.A.C. 7:27-24.10(c).

(d) The provisions of (a), (b) and (c) above shall not apply to a spout, portable fuel container, or portable fuel container and spout if:

1. The spout, portable fuel container, or portable fuel container and spout has been granted an IPE or variance by CARB or by the air pollution control agency of another state that has adopted a portable fuel container rule based on or substantially equivalent to the Ozone Transport Commission (OTC) "Model Rule for Portable Fuel Container Spillage Control" dated March 6, 2001, including subsequent revisions accessible at the OTC's website http://www.sso.org/otc/Publications/pub2.htm; and

2. The IPE or variance is valid for use in New Jersey pursuant to (e) below.

(e) The IPE or variance in (d) above shall not be valid for use in New Jersey to comply with this subchapter unless:

1. The IPE or variance is currently in effect (the Department shall consider an IPE or variance in effect if the issuing agency deems the IPE or variance to be in effect);

2. The product for which the IPE or variance is being claimed is the same product for which the IPE or variance was issued by the issuing agency;

3. For an IPE, the manufacturer has demonstrated to the issuing agency by clear and convincing evidence that, due to the product's design, delivery system, or other factors, the use of the product will result in cumulative VOC emissions below the highest emitting representative spill-proof system or representative spill-proof spout in its portable fuel container product category as determined from applicable testing;

4. For a variance, the requirements at N.J.A.C. 7:27-24.4(j)3 are met; and

5. The manufacturer has submitted to the Department, in accordance with (f) below, the following:

i. A statement that, for a specified product that it manufactures, it intends to comply with this section under an IPE or variance rather than meet the applicable standards;

ii. The product brand name;

iii. A copy of the document(s) setting forth the IPE or variance, the issuing agency's approval, the issuing agency's conditions of approval, the manufacturer's documentation demonstrating compliance with the IPE or variance conditions, and any documents from the issuing agency that subsequently modify or terminate its conditions of approval;

iv. If an IPE, the demonstration of (e)3 above;

v. If a variance, documents that substantiate the manufacturer's claim of extraordinary economic hardship;

vi. The name of the state that previously approved the IPE or variance and the issuing-state's approval date; and

vii. A statement that the IPE or variance, as well as the product for which the IPE or variance is being used, conforms with (e)1 through 4 above.

(f) Any submittal pursuant to (e)5 above shall be sent to the address given at N.J.A.C. 7:27-24.3(d) and the envelope or package shall be labeled as follows: "Attention: Portable Fuel Container Innovative Product Exemption" or "Attention: Portable Fuel Container Variance," whichever is applicable.

7:27-24.9 Portable fuel containers and spill proof spouts: labeling

(a) On and after January 1, 2005, a manufacturer of a spout, a portable fuel container, or a portable fuel container and spout that is subject to this subchapter pursuant to N.J.A.C. 7:27-24.2(b) shall clearly label the product as follows:

1. The following shall be displayed on a portable fuel container or on a portable fuel container and spout:

i. The phrase "Spill-Proof System" to mean that the product meets the applicable standards at N.J.A.C. 7:27-24.8;

ii. A date or date-code indicating the product's date of manufacture; and

iii. A representative code;

2. The following shall be displayed on a portable fuel container or on a portable fuel container and spout, or label, and on any accompanying package:

i. The product's flow rate (that is, the minimum rate at which the container-and-spout dispenses fuel); and

ii. If due to its design or other feature the portable fuel container and spout cannot be used to refuel an on-road motor vehicle, the phrase "Not Intended For Refueling On-Road Motor Vehicles" in type 34 point or greater;

3. The following shall be displayed on a spout's accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label:

i. The phrase "Spill-Proof Spout" to connote that, when used with a compatible fuel container, the spout meets the applicable standards at N.J.A.C. 7:27-24.8;

ii. A date or date-code indicating the spout's date of manufacture;

iii. A representative code; and

iv. The make, model number, and size of only those portable fuel container(s) the spout is designed to accommodate and can demonstrate compliance with N.J.A.C. 7:27-24.8; and

4. The following shall be displayed on a spill-proof spout, or label, and on any accompanying package:

i. The spout's minimum flow rate (that is, the minimum rate at which the spout dispenses fuel); and

ii. If due to its design or other feature the spout cannot be used to refuel an on-road motor vehicle, the phrase "Not Intended For Refueling On-Road Motor Vehicles" in type 34 point or greater.

(b) Manufacturers of portable fuel containers or portable fuel containers and spouts not subject to or not in compliance with the applicable standards in N.J.A.C. 7:27-24.8, may not display the phrase "Spill-Proof Spout" or "Spill-Proof System" on the portable fuel container or spout on any sticker affixed thereto, on any label, or on any accompanying package.

7:27-24.10 Portable fuel containers and spill proof spouts: recordkeeping and reporting

(a) On or after January 1, 2005, the manufacturer of a spout, a portable fuel container, or a portable fuel container and spout who is required to perform compliance testing pursuant to N.J.A.C. 7:27-24.11(a) shall:

1. Maintain a record of the results of the compliance testing, whether performed before or after January 1, 2005, for as long as the spout, portable fuel container, or portable fuel container and spout is offered for sale, held for sale, sold, or otherwise supplied for household use or institutional use in New Jersey; and

2. Make the test results available to the Department within 60 days of the manufacturer's receipt of a written request from the Department.

(b) Manufacturers shall submit IPE and variance documentation to the Department in accordance with N.J.A.C. 7:27-24.8(e)5 and (f).

(c) If the manufacturer uses a date-code on a product or its packaging, the manufacturer shall electronically register or re-register the product with the Department by following the procedure at N.J.A.C. 7:27-24.5(a)1 and 2, (b) and (c), and by following (d) through (g) below.

(d) The registration or re-registration shall include the following information:

1. The name of the manufacturer;

2. The full mailing address of the manufacturer;

3. The name and telephone number of a contact person;

4. Whether the product is a spout, portable fuel container, or portable fuel container and spout;

5. If the manufacturer is, for any product, complying with the requirements of this subchapter through one of the exemptions listed at N.J.A.C. 7:27-24.8(d), the following:

i. The name of the product;

ii. Whether the product is a spout, a portable fuel container, or a portable fuel container and spout; and

iii. The type of exemption;

6. An explanation of the date-code; and

7. An explanation of the representative code.

(e) The registration shall be submitted in accordance with the following schedule:

1. For a spout, portable fuel container, or portable fuel container and spout sold in New Jersey prior to January 1, 2005, the registration shall be submitted on or after (the operative date of these amendments) and prior to January 1, 2005; and

2. For a spout, portable fuel container, or portable fuel container and spout sold in New Jersey on or after January 1, 2005, that was not sold in New Jersey prior to January 1, 2005, the registration shall be submitted prior to selling the product in New Jersey.

(f) Each manufacturer subject to registration shall re-register the product within 90 days after any change in coding of the date-code or representative code.

(g) If a manufacturer seeks approval to submit its registration or re-registration on paper, rather than electronically, the following apply:

1. The manufacturer shall submit the written request to the address given at N.J.A.C. 7:27-24.3(d), and the envelope in which the written request is submitted shall be labeled as follows: "Attention: Request for On-Paper Submittal of Portable Fuel Container Registration";

2. The written request shall include an explanation of the hardship that electronic submission would impose on the manufacturer; and

3. The Department shall not approve a manufacturer's written request to submit its registration on paper unless the Department is satisfied that electronic submission would impose hardship on the manufacturer.

7:27-24.11 Portable fuel containers and spill proof spouts: testing

(a) The manufacturer of a spout, or the manufacturer of a portable fuel container and spout, shall perform compliance testing, using the test methods listed in (b) below, prior to allowing the spout or portable fuel container and spout to be distributed, offered for sale, held for sale, sold or otherwise supplied for household use or institutional use in New Jersey. The compliance testing shall demonstrate that the spout, together with each portable fuel container with which it is compatible, or the portable fuel container and spout, meet the applicable requirements at N.J.A.C. 7:27-24.8(a) and (b), and, therefore, qualify as a "spill-proof system" or a "spill-proof spout," as applicable.

(b) A manufacturer of a spout for a portable fuel container, or the manufacturer of a portable fuel container and spout, shall use the following test methods in performing the testing required at (a) above, unless the manufacturer obtains the Department's approval in writing to use alternative test method(s) pursuant to (c) below:

1. "Test Method 510, Automatic Shut-off Test Procedure for Spill-Proof Systems and Spill-Proof Spouts," adopted by CARB on July 6, 2000, including subsequent revisions, incorporated by reference herein;

2. "Test Method 511, Automatic Closure Test Procedure for Spill-Proof Systems and Spill-Proof Spouts," adopted by CARB on July 6, 2000, including subsequent revisions, incorporated by reference herein;

3. "Test Method 512, Determination of Fuel Flow Rate for Spill-Proof Systems and Spill-Proof Spouts," adopted by CARB on July 6, 2000, including subsequent revisions, incorporated by reference herein; and

4. "Test Method 513, Determination of Permeation Rate For Spill-Proof Systems," adopted by CARB on July 6, 2000, including subsequent revisions, incorporated by reference herein.

(c) A manufacturer may submit a written request to the Department for approval to use an alternate test method other than one given in (b) above, in order to demonstrate compliance with the applicable standards in N.J.A.C. 7:27-24.8(a) and (b). The Department shall not approve use of any such alternate test method unless the alternate test method has been approved in writing by the Department and the EPA and unless the manufacturer demonstrates, to the satisfaction of the Department and the EPA, that the alternate method is at least as accurate, precise, and appropriate as the test method given in (b) above, for which it would be substituted. A written request for Department approval to use an alternate test method pursuant to this subsection shall be addressed to:

Attn: Portable Fuel Container Test Method
Bureau of Technical Services
New Jersey Department of Environmental Protection
PO Box 437
380 Scotch Road
West Trenton, New Jersey 08625-0437

7:27-[24.7]24.12 [Civil or criminal penalties] Penalties and other requirements imposed for failure to comply

(a) Any person subject to this subchapter shall be responsible for ensuring compliance with all requirements of this subchapter. Failure to comply with any provision of this subchapter may subject the person to civil penalties in accordance with N.J.A.C. 7:27A-3 and to applicable criminal penalties, including, but not limited to, those set forth at N.J.S.A. 26:2C-19(f)[1 and 2].

(b) If a chemically formulated consumer product subject to this subchapter does not comply with the applicable VOC content requirements at N.J.A.C. 7:27-24.4, the Department may issue an order including, but not limited to, any or all of the following:

1. Requiring the product's manufacturer to:

i. Demonstrate to the satisfaction of the Department that the test results or calculations are in error, and that the product in fact complies with the applicable VOC content requirements at N.J.A.C. 7:27-24.4;

ii. Demonstrate to the satisfaction of the Department that the test results or calculations for that specific unit are not representative of the entire batch, or entire product line of that unit; and/or

iii. Within 30 days of the manufacturer's submission of the test report to the Department, recall its non-complying product from all retail outlets in New Jersey;

2. Requiring any distributor or supplier of the product to assist in a recall taking back any of the product it has distributed or supplied to a retail outlet; and/or

3. Prohibiting the sale of the product in New Jersey until the manufacturer makes a demonstration to the satisfaction of the Department that the product to be sold will meet the applicable VOC content requirements at N.J.A.C. 7:27-24.4.

(c) If a spout, portable fuel container, or portable fuel container and spout subject to this subchapter fails to comply with the applicable requirements at N.J.A.C. 7:27-24.8, the Department may issue an order including, but not limited to, any or all of the following:

1. Requiring the product's manufacturer to:

i. Demonstrate to the satisfaction of the Department that the test results or calculations are in error, and that the product in fact complies with the applicable requirements at N.J.A.C. 7:27-24.8;

ii. Demonstrate to the satisfaction of the Department that the test results or calculations for that specific unit are not representative of the entire batch, or entire product line of that unit; and/or

iii. Within 30 days of the manufacturer's submission of the test report to the Department, recall its non-complying product from all retail outlets in New Jersey;

2. Requiring any distributor or supplier of the product to assist in a recall taking back any of the product it has distributed or supplied to a retail outlet; and/or

3. Prohibiting the sale of the product in New Jersey until the manufacturer demonstrates to the satisfaction of the Department that the product to be sold will meet the applicable requirements at N.J.A.C. 7:27-24.8.

CHAPTER 27A
AIR ADMINISTRATION PROCEDURES AND PENALTIES

SUBCHAPTER 3. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:27A-3.10 Civil administrative penalties for violation of rules adopted pursuant to the Act

(a)-(l) (No change.)

(m) The violations of N.J.A.C. 7:27 and the civil administrative penalty amounts for each violation are as set forth in the following Civil Administrative Penalty Schedule. The numbers of the following subsections correspond to the numbers of the corresponding subchapter in N.J.A.C. 7:27. The rule summaries for the requirements set forth in the Civil Administrative Penalty Schedule in this subsection are provided for informational purposes only and have no legal effect.

CIVIL ADMINISTRATIVE PENALTY SCHEDULE

1.-23. (No change.)

24. [(Reserved)] **Civil administrative penalties for each violation of N.J.A.C. 7:27-24, Control of Air Pollution from Consumer Products, are as set forth in the following table:**

Citation and Rule Summary	Class	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
N.J.A.C. 7:27-24.3(b) Distributor identification and shipping documentation availability	Manufacturer, Distributor, Seller	$ 8,000	$16,000	$40,000	$50,000
N.J.A.C. 7:27-24.3(e) Shipping documentation compliance statement	Manufacturer, Distributor, Seller	$ 4,000	$ 8,000	$20,000	$50,000
N.J.A.C. 7:27-24.4(a) VOC standards (Per unit-eight pounds or any part thereof)					
N.J.A.C. 7:27-24.4(a) Less than 25 percent over the standard	Manufacturer, Distributor, Seller	$300.00	$600.00	$ 1,500	$ 4,500
N.J.A.C. 7:27-24.4(a) From 25 through 50 percent over the allowable standard	Manufacturer, Distributor, Seller	$600.00	$ 1,200	$ 3,000	$ 9,000
N.J.A.C. 7:27-24.4(a) Greater than 50 percent over the allowable standard	Manufacturer, Distributor, Seller	$ 1,000	$ 2,000	$ 5,000	$15,000
N.J.A.C. 7:27-24.4(h) Charcoal lighter product requirements	Manufacturer	$500.00	$ 1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-24.4(j) IPE, ACP and variance requirements	Manufacturer	$500.00	$ 1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-24.4(l) Toxic content in aerosol adhesive	Manufacturer, Distributor, Seller	$500.00	$ 1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-24.4(m) VOC content in aerosol adhesive	Manufacturer, Distributor, Seller	$500.00	$ 1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-24.5(a) Registration requirements	Manufacturer	$500.00	$ 1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-24.5(d) Date or date-code requirement	Manufacturer	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-24.5(e) Date-code registration	Manufacturer	$500.00	$ 1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-24.5(g) Information on aerosol adhesive products after 1/1/05	Manufacturer	$500.00	$ 1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-24.5(h) Floor wax stripper products after 1/1/05	Manufacturer	$ 2,000	$ 4,000	$10,000	$30,000

N.J.A.C. 7:27-24.5(i) Defacing of label	Manufacturer, Distributor, Seller	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-24.6(a) Recordkeeping for chemically formulated products subject to VOC limits	Manufacturer	$ 4,000	$ 8,000	$20,000	$50,000
N.J.A.C. 7:27-24.6(b) Submit information on product	Manufacturer	$ 4,000	$ 8,000	$20,000	$50,000
N.J.A.C. 7:27-24.6(c) Recordkeeping for chemically formulated products not subject to VOC limits	Manufacturer	$ 1,000	$ 2,000	$ 5,000	$15,000
N.J.A.C. 7:27-24.6(d) Keep records for 5 years	Manufacturer	$ 4,000	$ 8,000	$20,000	$50,000
N.J.A.C. 7:27-24.6(e) Submit information upon written request	Manufacturer, Distributor	$ 4,000	$ 8,000	$20,000	$50,000
N.J.A.C. 7:27-24.6(f) Distributor identification	Manufacturer, Distributor, Seller	$ 8,000	$16,000	$40,000	$50,000
N.J.A.C. 7:27-24.6(g) Charcoal lighter product records submittal	Manufacturer	$ 4,000	$ 8,000	$20,000	$50,000
N.J.A.C. 7:27-24.6(h) Submit results from testing	Manufacturer	$ 1,000	$ 2,000	$ 5,000	$15,000
N.J.A.C. 7:27-24.6(i) Falsification of records	Manufacturer, Distributor, Seller	$10,000	$25,000	$50,000	$50,000
N.J.A.C. 7:27-24.6(j) IPE, ACP, and variance documentation	Manufacturer	$ 1,000	$ 2,000	$ 5,000	$15,000
N.J.A.C. 7:27-24.7(a) Testing of the product	Manufacturer	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-24.8(a) Fuel container requirements	Manufacturer, Distributor, Seller	$300.00	$600.00	$ 1,500	$ 4,500
N.J.A.C. 7:27-24.8(b) Fuel container and spout requirements	Manufacturer, Distributor, Seller	$300.00	$600.00	$ 1,500	$ 4,500
N.J.A.C. 7:27-24.8(c) Sell through requirements for fuel containers	Manufacturer, Distributor, Seller	$300.00	$600.00	$ 1,500	$ 4,500
N.J.A.C. 7:27-24.8(e) IPE and variance requirements	Manufacturer	$500.00	$ 1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-24.9(a) and (b) Labeling of fuel container	Manufacturer	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-24.10(a) Recordkeeping for fuel containers	Manufacturer	$ 4,000	$ 8,000	$20,000	$50,000
N.J.A.C. 7:27-24.10(b) IPE and variance documentation	Manufacturer	$ 1,000	$ 2,000	$ 5,000	$15,000
N.J.A.C. 7:27-24.10(c) Date-code registration	Manufacturer	$500.00	$ 1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-24.10(e) Registration schedule	Manufacturer	$500.00	$ 1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-24.10(f) Register code change	Manufacturer	$500.00	$ 1,000	$ 2,500	$ 7,500
N.J.A.C. 7:27-24.11(a) Testing of portable fuel containers	Manufacturer	$ 2,000	$ 4,000	$10,000	$30,000
N.J.A.C. 7:27-24.12(b) Order violation and recall of chemically formulated consumer products	Manufacturer, Distributor, Seller	$10,000	$25,000	$50,000	$50,000
N.J.A.C. 7:27-24.12(c) Order violation and recall of portable fuel containers/spouts	Manufacturer, Distributor, Seller	$10,000	$25,000	$50,000	$50,000

7:25.-31. (No change.)
(o)-(p) (No change.)